Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Virginia Supreme Court Opinion				
Walter Franklin Green, IV	Harrisonburg, VA	Reversed, vacated and remanded	November 3, 2006	2
Circuit Court				
Charles Lowenberg Pincus, III	Virginia Beach, VA	One Year Suspension w/terms	September 11, 2006	4
Disciplinary Board				
Claude Alexander Allen	Gaithersburg, MD	Suspension	November 17, 2006	n/a
Richard Neal Butt	Portsmouth, VA	Six Month Suspension	November 15, 2006	9
Robert Cromwell Oliver, Jr.	Eastville, VA	Revocation	January 15, 2007	n/a
William P. Robinson, Jr.†	Norfolk, VA	Three Year Suspension	October 28, 2005	n/a
William P. Robinson, Jr.†	Norfolk, VA	Revocation	November 1, 2006	n/a
Isidoro Rodriguez	Annandale, VA	Revocation	October 27, 2006	11
Tony Charles Rudy	Huntington Beach, CA	Revocation	November 17, 2006	n/a
Alan S. Toppelberg	Alexandria, VA	Suspension	November 17, 2006	n/a
District Committees				
William Craig Meyer, II	Chatham, VA	Public Admonition w/terms	November 11, 2006	20
Donald Romain Ray	Norfolk, VA	Public Dismissal for Exceptional Circumstances	September 28, 2006	23
Eric Lee Sisler	Lexington, VA	Public Reprimand	November 1, 2006	26
License Reinstatement				
William McMillan Powers	Portsmouth, VA	License Reinstated	October 25, 2006	n/a
Interim Suspensions — Failure to Comply w/Subpoena				
Mikre-Michael Ayele	Arlington, VA	Suspended October 10, 2006		n/a
Robert Joseph Hill	Fairfax, VA	Suspended October 30, 2006	Lifted November 27, 2006	n/a
Khalil Wali Latif	Midlothian, VA	Suspended January 23, 2006	Lifted November 2, 2006	n/a

†*Deceased*
**Respondent has noted an appeal with the Virginia Supreme Court.*
***Virginia Supreme Court granted stay of suspension pending appeal.*

Present: Hassell, C.J., Lacy, Keenan, Kinser, Lemons, and Agee, J.J. and Carrico S.J.

WALTER FRANKLIN GREEN, IV

v. Record No. 060558
OPINION BY JUSTICE CYNTHIA D. KINSER
November 3, 2006

VIRGINIA STATE BAR

FROM THE VIRGINIA STATE BAR DISCIPLINARY BOARD

This case is an appeal of right by an attorney from a ruling of the Virginia State Bar Disciplinary Board (Disciplinary Board). Because we conclude that the Disciplinary Board abused its discretion in refusing to admit certain evidence in mitigation of a sanction, we will reverse the Disciplinary Board's order imposing a 60-day suspension of the attorney's license to practice law in the Commonwealth of Virginia.

RELEVANT PROCEEDINGS AND FACTS

In an order dated September 16, 2005, this Court affirmed the Disciplinary Board's order finding that Walter Franklin Green, IV, had violated Rules 8.4(b) and 1.3(a) of the Virginia Rules of Professional Conduct (the Disciplinary Rules). *Green v. Virginia State Bar*, Record No. 050289 (September 16, 2005). This Court, however, concluded that the evidence did not support the Disciplinary Board's additional finding that Green's "pattern" of failing to appear in court violated Disciplinary Rule 1.3(a). *Id.* Accordingly, we vacated the sanction suspending Green's license to practice law in this Commonwealth for 60 days and remanded the case to the Disciplinary Board for reconsideration of an appropriate sanction. *Id.*

On remand, the Disciplinary Board advised Green that it would convene a hearing via telephonic conference call to reconsider what sanction to impose for his violations of the Disciplinary Rules. In a pleading filed with the Disciplinary Board, Green objected to the telephonic conference call and asserted that it was "a procedurally inadequate substitute for a hearing" and was not "a suitable forum for the reception of evidence." At the beginning of the hearing, Green again objected to the hearing being conducted via telephonic conference call. Green claimed that he wished to introduce documents and witness testimony from his office staff to substantiate the adverse economic impact on his legal practice caused by an allegedly untimely press release by the Virginia State Bar (Bar) on November 22, 2004. In that press release, the Bar announced that on November 19, 2004, the Disciplinary Board had suspended Green's license to practice law in the Commonwealth of Virginia for a period of 60 days. The press release further stated the Disciplinary Board had concluded that Green "failed to act diligently and committed a wrongful act reflecting adversely on his fitness to practice law during his representation of two brothers in a narcotics case.[1] The Disciplinary Board overruled Green's objection and proceeded with the hearing telephonically.

Prior to and at the hearing, Green submitted various documents that he wished to introduce in mitigation of a sanction pursuant to the Rules of this Court, Part 6, § IV, Para. 13(I)(2)(f)(2).[2] The documents included the Disciplinary Board's 2004 press release and two newspaper articles, both of which discussed the suspension of his license to practice law. One of the articles appeared in the November 24, 2004 edition of a newspaper circulated in the area where Green resides, and the other article was from the *Virginia Lawyer Register*.

In an order dated January 3, 2006, the chair of the Disciplinary Board panel hearing Green's case ruled that certain documents Green submitted prior to the hearing were irrelevant and inadmissible. Those documents included the Disciplinary Board's 2004 press release. That order, however, allowed Green to present evidence and argument relevant to the imposition of an appropriate sanction. At the beginning of the telephonic hearing held on January 10, 2006, the Disciplinary Board overruled the January 3, 2006 order in part and ruled it would hear only argument with regard to an appropriate sanction.[3] The Disciplinary Board decided to base its reconsideration of the sanction solely on the record from the prior disciplinary proceedings held on November 19, 2004 and the order of this Court remanding the case to the Disciplinary Board. After deciding it would hear only argument, the Disciplinary Board, on the other hand, ruled neither Green's documents nor the testimony he wanted to offer were admissible.

Upon hearing argument of counsel for the Bar and argument of Green, in proper person, the Disciplinary Board concluded that "the seriousness of the two charges of misconduct affirmed by the . . . Court" and Green's "extensive disciplinary record" merited the previously imposed sanction, a 60-day suspension of Green's license to practice law in the Commonwealth of Virginia. Green appeals from the Disciplinary Board's order of suspension dated January 24, 2006.

FOOTNOTES

1 The Disciplinary Board's press release preceded issuance of its order of suspension dated December 21, 2004 and its summary order dated January 7, 2005.

2 Paragraph 13(I)(2)(f)(2) provides, "If the [Disciplinary] Board concludes that there has been presented clear and convincing evidence that the Respondent has engaged in Misconduct, after considering evidence and arguments in aggravation and mitigation, the [Disciplinary] Board shall impose one of the following sanctions . . . ." (Emphasis added.)

3 Pursuant to the Rules of this Court, Part 6, § IV, Para. 13(B)(5)(b)(5), "[t]he [Disciplinary] Board shall have [the power] to act through its Chair or one of the Vice Chairs (an officer) on any non-dispositive pre-hearing matters . . . where all parties are in agreement, subject to the following qualification and exception: (1) any pre-hearing ruling on a non-dispositive matter made by an officer of the Board shall be subject to being overruled by a majority vote of the Panel which actually hears the matter."

ANALYSIS

On appeal, Green first challenges the Disciplinary Board's refusal to admit evidence he proffered regarding the Bar's November 2004 press release and the devastating impact it had on his law practice and family. Green claims that the publicity "ruined his law practice and reputation" and was tantamount to a "defacto" suspension. He asserts this evidence was in mitigation of a sanction and that he had a right to present it pursuant to the Rules of this Court, Part 6, § IV, Para. 13(I)(2)(f)(2).

In response, the Bar contends that it afforded Green an opportunity to present relevant evidence and argument in mitigation of a sanction, but that he failed to do so. The Bar argues Green's evidence was irrelevant and that the Disciplinary Board therefore did not abuse its discretion in making its evidentiary rulings.

Like a trial court, the Disciplinary Board's decision to admit or exclude evidence is a discretionary matter and will not be overturned on appeal unless the record shows an abuse of that discretion. *See Rose v. Jaques*, 268 Va. 137, 154, 597 S.E.2d 64, 74 (2004); *May v. Caruso*, 264 Va. 358, 362, 568 S.E.2d 690, 692 (2002). In this instance, we conclude that the Disciplinary Board did abuse its discretion. Green's proffered evidence regarding the adverse impact on his law practice and reputation resulting from the public dissemination of the Disciplinary Board's findings that he had violated the Disciplinary Rules and its suspension of his license to practice law was relevant to the question whether the Disciplinary Board should lessen the severity of the sanction to be imposed for Green's professional misconduct. While the Disciplinary Board would determine what weight, if any, to give to such evidence, it was nevertheless relevant evidence in mitigation of a sanction, and therefore, admissible. "'Evidence is relevant if it tends to prove or disprove, or is pertinent to, matters in issue.'" *Velocity Express Mid-Atlantic v. Hugen*, 266 Va. 188, 205, 585 S.E.2d 557, 566 (2003) (quoting *Clay v. Commonwealth*, 262 Va. 253, 257, 546 S.E.2d 728, 730 (2001)).

In *Cummings v. Virginia State Bar*, 233 Va. 363, 355 S.E.2d 588 (1987), this Court addressed a similar issue regarding the admissibility of mitigating evidence. Eric L. Cummings was disbarred from practicing law in the District of Columbia. *Id.* at 366, 355 S.E.2d at 590. The Disciplinary Board then issued an order directing Cummings to show cause why his license to practice law in the Commonwealth should not be permanently revoked in light of the proceedings in the District of Columbia. *Id.* Cummings filed an answer to the show cause order and sought to introduce evidence in support of his answer at a hearing before the Disciplinary Board. *Id.* The Disciplinary Board ruled that Cummings had failed to allege any grounds that would authorize the Disciplinary Board to impose a sanction other than that imposed in the District of Columbia and accordingly refused to hear any evidence in support of Cummings' answer. *Id.*

On appeal, we agreed that Cummings could not relitigate any issues of fact decided in the District of Columbia. *Id.* at 367, 355 S.E.2d at 591. This Court, however, concluded Cummings was entitled to present evidence "which might have the effect of mitigating the sanctions to be imposed in Virginia by showing that under the existing circumstances a repetition of the same discipline would result in a grave injustice." *Id.* (internal quotation marks omitted). Likewise, Green was entitled to present evidence tending to mitigate the sanction to be imposed by showing to what extent he had already suffered adverse consequences because of the public dissemination of the Disciplinary Board's findings that he had violated the Disciplinary Rules and the suspension of his license to practice law.[4] *See El-Amin v. Virginia State Bar*, 257 Va. 608, 619, 514 S.E.2d 163, 169 (1999) (mitigating evidence included fact of wife's and daughter's illnesses, revision of office procedures, and partial refund of client's retainer). Green also assigns error to the Disciplinary Board's decision to conduct the January 10, 2006 hearing by telephonic conference call. Green argues, as he did before the Disciplinary Board, that such a hearing impeded his ability to present evidence effectively and had a chilling effect on his right to be heard on the issue of an appropriate sanction. The Bar counters that the Rules of the Supreme Court of Virginia do not prohibit the use of a telephonic hearing to determine an appropriate sanction and that Green was afforded a full opportunity to present relevant evidence and argument in mitigation of a sanction.

It is correct that the Rules of this Court, Part 6, § IV, Para. 13, do not specifically require the Disciplinary Board to conduct the hearing at issue in person as opposed to using a telephonic conference call. Green made his objection to the telephonic conference call known to the Disciplinary Board both in a written pleading and orally at the beginning of the hearing. The record also shows that Green, while participating in the telephonic hearing from his office in Harrisonburg, asserted that he wished to have his office staff testify as to the "economic impact of the press release, and, in fact, call witnesses to testify what the press release has done to [his] practice." Based on that limited proffer, the Disciplinary Board determined the testimony was irrelevant. Green, however, never stated exactly whom he wished to call as witnesses, where those persons were at that time, i.e., in his office or elsewhere, or about what they would testify other than the "economic impact of the press release." Thus, given the record in this case, we cannot determine whether Green was prejudiced by the Disciplinary Board's decision to overrule his objection to the telephonic conference call and are therefore constrained to conclude the Disciplinary Board did not err in its ruling.

CONCLUSION

For these reasons, we will reverse the Disciplinary Board's order of January 24, 2006, vacate the sanction imposed, and remand this case for further proceedings consistent with this opinion to determine an appropriate sanction.[5]

Reversed, vacated, and remanded.

FOOTNOTES

4 To the extent that the Disciplinary Board overruled the January 3, 2006 order and decided to hear only argument relevant to the imposition of an appropriate sanction, such a ruling violated the provisions of the Rules of this Court, Part 6, § IV, Para. 13(I)(2)(f)(2).

5 In light of our decision, it is not necessary to address Green's other assignments of error.

VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

IN THE MATTER OF
Case No. CL06-2010

CHARLES LOWENBERG PINCUS, III

ORDER

This matter came to be heard on September 11, 2006, upon an Agreed Disposition between the Virginia State Bar, the Respondent, Charles Lowenberg Pincus, III, and his counsel, David Ross Rosenfeld, Esquire.

A Three-Judge Court impaneled by the Supreme Court of Virginia on July 14, 2006, and on August 31, 2006, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the Code of Virginia (1950) as Amended, consisting of the Honorable Robert G. O'Hara, Jr., Retired Judge of the Sixth Judicial Circuit, the Honorable Joseph A. Leafe, Retired Judge of the Fourth Judicial Circuit, and the Honorable Pamela S. Baskervill, Judge of the Eleventh Judicial Circuit, designated Chief Judge, considered the matter by telephone conference. The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis. The Respondent, Charles Lowenberg Pincus, III, appeared through his counsel, David Ross Rosenfeld, Esquire.

Upon due deliberation, it is the decision of the Three-Judge Court to accept the Agreed Disposition. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar, the Respondent, and his counsel, are incorporated herein as follows:

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, Charles Lowenberg Pincus, III, was an attorney licensed to practice law in the Commonwealth of Virginia.

04-021-0063
Complainants: Vickie L. Johnston

2. The complainant, Vickie L. Johnston, is a real estate investor.

3. In February 2003, Ms. Johnston decided to purchase a vacation rental home in Virginia Beach, Virginia as an investment.

4. She and another investor bought the home with a $400,000 mortgage, dated February 19, 2003, that was later sold to Chase Manhattan Mortgage Corporation.

5. The closing took place in February 2003.

6. Ms. Johnston commenced improvements to the property, including the addition of a swimming pool and interior remodeling.

7. An acquaintance, Burton L. Johnson, expressed an interest in buying the home.

8. Ms. Johnston, her partner, and Mr. Johnson reached an agreement for Mr. Johnson to buy the home.

9. Mr. Pincus agreed to serve as settlement agent. After several delays, closing was scheduled for July 1, 2003.

10. Mr. Pincus prepared the closing documents and settlement sheet, but was unable to obtain a payoff statement from Chase Manhattan, the mortgage lender.

11. In the absence of a payoff statement from the lender, and utilizing a figure provided by the sellers and accepted by the purchaser, the purchaser and the sellers agreed to have Mr. Pincus calculate the closing based upon a mortgage payoff figure of $399,404.42 on the settlement statement.

12. The sellers further neglected to advise Mr. Pincus that there was a significant pre-payment penalty associated with the payoff of the loan although the prepayment provision was in the loan agreement that they executed.

13. At the closing on July 1, 2003, Mr. Pincus disbursed funds to the buyer and sellers, who understood that based upon the information provided by Ms. Johnston, Mr. Pincus would be able to disburse sufficient funds to retire the existing mortgage.

14. Mr. Pincus did not timely retire the existing mortgage because he had not been provided with nor did he obtain the correct information concerning the mortgage balance, and the interest and penalties due.

15. Mr. Pincus' real estate trust account ledger shows that he received $456,646.58 from Burton Johnson (representing funds he borrowed from SunTrust Mortgage) by wire transfer on July 3, 2003. Of that amount, Mr. Pincus disbursed $19,340 to Ms. Johnston on July 1, 2003 (two days before the funds were on deposit), $10,000 to Burton Johnson on July 2, 2003 (one day before the funds were on deposit), $10,000 more to Burton Johnson on July 11, 2003, and $1,405 to Mr. Pincus for legal fees on July 11, 2003, which sum was comprised of $600 paid by the purchaser, Burt Johnson, and $660 paid by the complainant to reimburse Respondent for two bounced checks that complainant had previously given to Mr. Pincus to cover other legal services. Respondent also paid $1,703 to Seaboard Title on July 10, 2003.

16. Mr. Pincus' trust account bank statements and cancelled checks confirm the above-referenced wire deposit and disbursements, totaling $42,448.

17. These disbursements of excess loan proceeds to Johnson are not reflected on the settlement statement.

18. Therefore, after July 11, 2003, there should have been at least $414,198.58 remaining on account for the Johnson closing in Pincus' real estate trust account. His trust account balance, however, was far below this amount on several occasions, sometimes in excess of $100,000 because in an unrelated real estate closing, Mr. Pincus disbursed funds based upon the mistaken belief that the lender had wired funds into Mr. Pincus' real estate trust account when, in fact, the lender had not wired said funds.

19. On July 15, 2003, Mr. Pincus obtained the accurate payoff statement from Chase Manhattan, $416,062.26.

20. Having received a wire deposit of $456,646.58 from Mr. Johnson, and having disbursed $42,448 of those funds already, Mr. Pincus did not have enough money to complete the closing.

21. Of the shortfall, $8,653.75 represented unpaid interest dating from May 1, 2003, and a delinquent mortgage payment from June 1, 2003, the sellers having not remained current on the mortgage payments.

22. The other $7,998 was a prepayment penalty imposed by the lender on the basis that the buyout constituted a refinance instead of a sale.

23. On August 22, 2003, with the prepayment penalty issue still unresolved, Mr. Pincus wired $100,000 of the settlement funds to Chase Manhattan erroneously believing that $100,000 was the most he could send without triggering a prepayment penalty under the terms of the mortgage.

24. On October 21, 2003, Mr. Pincus paid the rest of the funds that he held, $309,596.85 to Chase Manhattan, leaving an unpaid balance of $29,761.99 on the underlying mortgage. Mr. Pincus succeeded in having the lender waive the prepayment penalty.

25. In his initial response to the bar complaint, dated October 6, 2003, Mr. Pincus said that he had maintained $411,356.58 on his client subsidiary ledger (representing the erroneous payoff amount plus closing costs that Johnson brought to closing), and attached his August and September 2003 trust account bank statements as purported proof.

26. The July 31, 2003 opening balance in his trust account, however, was only $306,696.51, according to his bank statements. On August 22, 2003, it dropped to $109,622.34, the day he sent the $100,000 wire, according to his bank statements.

27. As noted above, the shortage in his real estate trust account was caused when Mr. Pincus completed an unrelated closing on July 10, 2004, by wiring $170,000 to retire an existing mortgage on the erroneous belief that the purchaser's lender had wired the funds to his trust account.

28. There is no evidence that Mr. Pincus intentionally misused or misappropriated client funds.

29. Mr. Pincus' real estate trust account ledger balances are inconsistent with the bank statement balances; although the ledgers still reflect that he was out-of-trust in August-September 2003.

30. As a result of the mortgage not being paid off, the lender repeatedly dunned Ms. Johnston for payment and threatened foreclosure up until the mortgage was finally retired.

31. Subsequent to the events described above, Respondent has regularly utilized the services of a certified public accountant who, on no less than a monthly basis, oversees the management of Respondent's trust account, including all funds deposited into and disbursements from said trust account; there have been no further overdrafts in Respondent's trust accounts.

32. Subsequent to the events described above, Respondent has utilized the services of Janean Johnston, Esquire, a risk management consultant routinely utilized by the Virginia State Bar and regularly employed by attorneys in Virginia, who, on two separate occasions, performed an in-depth review of Respondent's office management practices and on each occasion reported that "Mr. Pincus is managing his law practice very efficiently and ethically."

33. Respondent is no longer CRESPA certified and is no longer performing real estate closings.

II. RULE VIOLATIONS

(Johnston Complaint)

The parties agree that the foregoing conduct gives rise to violations of the following Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.15 Safekeeping Property

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

04-021-1867
Complainant: VSB/Anonymous

I. STIPULATIONS OF FACT (continued)

34. Between March 31, 2003, and April 4, 2003, Mr. Pincus conducted three real estate closings during a time when he knew that his law license was summarily suspended.

35. In July 2004, Mr. Pincus consented to discipline by the Virginia State Bar for, *inter alia*, conducting two of these three real estate closings and the third real estate closing charged by the bar occurred during the exact same time period, which discipline included a 45 day suspension of Respondent's license and a CRESPA fine of $2,000.

36. The Virginia State Bar discovered the closings in the present case after-the-fact.

II. RULE VIOLATIONS

(VSB/Anonymous Complaint)

The parties agree that the foregoing conduct gives rise to violations of the following Rules of Professional Conduct:

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

04-021-2075
Complainant: Randy G. Maples and Rebecca L. Maples

I. STIPULATIONS OF FACT (continued)

37. On July 6, 2002, Rebecca L. Maples hired Mr. Pincus for a child custody matter, paid a fee of $200, and executed a representation contract. (The parties executed the contract on July 6, 2002, although the body of the contract indicates that it was made on August 6, 2002.)

38. Mr. Pincus visited the court and obtained custody petition forms, but took no further action.

39. Mr. Pincus explained to the bar that he needed the father's address, but that Ms. Maples repeatedly failed to give it to him.

40. On February 4, 2003, Ms. Maples wrote to Mr. Pincus asking for a refund, and advising Mr. Pincus that she was terminating his services.

41. Mr. Pincus did not terminate his services as directed, saying that he contacted Ms. Maples by telephone to discuss the matter.

42. Ms. Maples said that she had no recollection of such a call.

43. A handwritten note in Mr. Pincus' file, dated April 11, 2003, reads "She will call to give you info on the children she wants to file custody on. I need kid's info, Dad's and Moms. See petition in the file." This is followed by the inscription, "She never called!"

44. By letter, dated September 12, 2003, Mr. Pincus wrote Ms. Maples to say that he had sent her a letter with an information request, but that he received no response. (There is no letter to this effect in Mr. Pincus' records.) The September 12 letter further asked her to contact him if she was interested in pursuing the case.

45. By letter, dated November 13, 2003, Ms. Maples replied, saying that she needed Mr. Pincus' help the year before, but that the father had moved out of state with the child since then, that she did not need his services, that she had hired another attorney, and that she wanted her money back.

46. On September 1, 2004, after the bar commenced an investigation, Mr. Pincus issued the refund by cashier's check.

II. RULE VIOLATIONS

(Maples Complaint)

The parties agree that the foregoing facts give rise to violations of the following Rules of Professional Conduct:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

III. DISPOSITION

In accordance with the Agreed Disposition, it is the decision of this Court to **suspend the license of the Respondent, Charles Lowenberg Pincus, III, to practice law in the Commonwealth of Virginia for a period of one-year,** with execution of the law license suspension suspended for a period of one (1) year subject to the following terms and conditions:

1. The Respondent, Charles Lowenberg Pincus is placed on disciplinary probation for a period of one (1) year, said period to begin on September 11, 2006, the date that this Honorable Court approved the Agreed Disposition. Mr. Pincus will engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during such one-year probationary period. Any final determination of misconduct determined by any District Committee of the Virginia State Bar, the Disciplinary Board, or a three-judge court to have occurred during such period will be deemed a violation of the terms and conditions of this Agreed Disposition and will result in the imposition of the One-Year Suspension of the Respondent's license to practice law in the Commonwealth of Virginia. The One-Year Suspension will not be imposed while Mr. Pincus is appealing any adverse decision that might result in a probation violation.

2. For a period of eighteen months beginning October 15, 2006, or such shorter period as Assistant Bar Counsel may deem appropriate:

Mr. Pincus will provide Assistant Bar Counsel or his designee cash receipts, cash disbursements and reconciliation reports for the preceding three months signed by Respondent and his bookkeeper for all escrow and CRESPA accounts and subsidiary ledgers therein to reflect reconciled balances. Said reports will be due October 15, 2006, January 15, 2007, April 15, 2007, July 15, 2007, October 30, January 15, 2008, and April 15, 2008;

Mr. Pincus agrees to allow an on-site inspection by Bar Counsel or his designee at his office of records of escrow accounts with 48 hours written prior notice to Mr. Pincus at his address of record. The scope and purpose of the inspection(s) is to insure compliance with Rule 1.15; and

Mr. Pincus shall remain in full compliance with Rule 1.15.

Mr. Pincus shall engage the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-4421, (703) 567-0088 who shall no later than September 30, 2007, provide a written report to Edward M. Davis, Assistant Bar Counsel, or his designee, detailing the results of her evaluation. It shall be sufficient if Ms. Johnston reports that Mr. Pincus is appropriately addressing his client responsibilities. Notwithstanding the reporting schedule set forth herein, should Ms. Johnston at any time determine that Mr. Pincus' law office management functions materially impair Mr. Pincus' ability to practice law in compliance with the Rules of Professional Conduct, and Mr. Pincus fails to cure any deficient law office management functions to Ms. Johnston's satisfaction after being provided with a reasonable notice and opportunity to cure those deficient management functions by Ms. Johnston, she shall make immediate report to the Virginia State Bar of same. To implement the terms hereof, Mr. Pincus shall immediately provide Ms. Johnston with a copy of the Three-Judge Court's Order and execute such release as necessary to authorize and direct Ms. Johnston to furnish the Virginia State Bar with the information and reports referred to herein. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to Ms. Johnston's findings. Mr. Pincus shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter). Mr. Pincus shall have discharged his obligations respecting the terms contained in this Term if Ms. Johnston's reports regarding Respondent confirm that each client matter is current, moving forward, and being attended to timely by the Respondent, and Respondent has remained in compliance with all of the terms contained herein.

Upon satisfactory proof that the terms and conditions of this Agreed Disposition have been met, this matter shall be closed. Failure to comply with any of the foregoing terms and conditions will result in the imposition of the One-Year Suspension of the Respondent's license to practice law. The imposition of the One-Year Suspension will not require a hearing before the Virginia State Bar Disciplinary Board or a three-judge court on the underlying charges of misconduct stipulated to in this Agreed Disposition if the Virginia State Bar discovers that the Respondent has violated any of the foregoing terms and conditions. Instead, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court. Pursuant to Part 6, Sec. IV, Para. 13. B.8 (c) of the Rules, the Clerk of the Disciplinary System shall assess costs.

The court reporter who transcribed these proceedings is Donna Chandler of Chandler and Halasz, Registered Professional Reporters, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

ENTERED THIS 29TH DAY OF September, 2006
CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

Pamela S. Baskerville, Chief Judge
Three-Judge Court

Robert G. O'Hara, Jr., Retired Judge
Three-Judge Court

Joseph A. Leafe, Retired Judge
Three-Judge Court

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
RICHARD NEAL BUTT

VSB DOCKET NO. 05-021-1771

ORDER OF SUSPENSION

This matter came to be heard on November 15, 2006, upon an Agreed Disposition between the Virginia State Bar and the Respondent, Richard Neal Butt.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Robert E. Eicher, Esquire, Joseph R. Lassiter, Esquire, Russell W. Updike, Esquire, Werner Quasebarth (Lay Member), and Peter A. Dingman, Esquire, Chair, considered the matter by telephone conference. The Respondent, Richard Neal Butt, participated in the telephone conference *pro se*. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

Upon due deliberation, it is the unanimous decision of the board to accept the Agreed Disposition. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar and the Respondent are incorporated herein as follows:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Richard Neal Butt, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. From 1999 to September 2004, Mr. Butt worked as an associate at a large Virginia Beach, Virginia law firm.

3. During 2003 and 2004, Mr. Butt represented American Express in a corporate credit card collection matter filed in the Fairfax County Circuit Court. The defendants were the individual card user and his employer.

4. The card user defended the case on the basis that he never agreed to be responsible to pay the charge card account.

5. Mr. Butt replied to a Request for Admissions, admitting that American Express had no proof that the defendant card user was obligated to pay the charge card account.

6. Mr. Butt failed to comply with other discovery matters, and the defendant filed a motion to compel.

7. On June 26, 2003, Mr. Butt endorsed a consent decree for the case to be dismissed with prejudice, for American Express to pay $800 in attorney's fees, and for American Express to take all steps necessary to remove the defendant's negative credit history.

8. Mr. Butt endorsed the decree, and forwarded it to opposing counsel asking them to submit it to the court for entry. Mr. Butt paid the $800 with his own funds.

9. Thereafter, Mr. Butt contacted American Express and its collector, Nationwide Credit, about removing the negative credit history. He followed his contact with Nationwide by e-mail on August 22, 2003.

10. Mr. Butt never received a reply from Nationwide, and did not follow-up. The negative credit history stood.

11. On four occasions between August 4, 2003, and November 11, 2003, the defendant's attorney advised Mr. Butt that the negative credit history remained, and demanded proof of his compliance with the consent order. Receiving no satisfactory answer, on November 14, 2003, defendant moved for a rule to show-cause.

12. The court issued the rule, and by order entered January 23, 2004, ordered American Express to pay daily sanctions per day until the negative credit history was removed, and to pay attorneys fees and other sanctions.

13. Mr. Butt endorsed the order "Seen and Agreed" on behalf of his client, American Express, although he did not seek his client's consent to do so, and did not have the authority to. Mr. Butt never informed his client about the sanctions order, and paid the sanctions with his own funds.

14. On January 22, 2004, Mr. Butt sent another e-mail to Nationwide asking for the removal of the negative credit history, with no results. This is the last known attempt by Mr. Butt to remove the negative credit history, and the sanctions continued to accumulate.

15. Having informed neither his client nor his employer about the mounting sanctions, Mr. Butt paid the sanctions directly to the defendant from personal or family funds.

16. Mr. Butt was unable to maintain the sanctions payments, and on August 5, 2004, the defendant filed for a partial monetary judgment.

17. Mr. Butt's law firm did not learn about this series of events until it received a copy of the motion for partial monetary judgment from American Express in August 2004. American Express had received it from the defendant's attorney.

18. Having finally learned about the mounting sanctions, American Express arranged the removal of the negative credit history, which was accomplished on August 13, 2004.

19. Mr. Butt neither informed nor sought help from anyone at his law firm about this dilemma out of concern that he might lose his employment. Members of the law firm would say that they conducted their own investigation, terminated Mr. Butt one month later, and notified the Virginia State Bar by letter of complaint, dated November 2, 2004.

21. Mr. Butt acknowledged to the Virginia State Bar investigator that he received the bar complaint letter, but did not respond to it, saying that the letter of complaint was accurate and that he had nothing to add to it.

22. Members of the law firm where Mr. Butt worked would say that they paid the remaining sanctions, and settled the matter with the concurrence of American Express.

23. They would say further that as a result of paying the sanctions, the law firm's shareholders suffered a reduction in compensation.

II. DISCIPLINARY RULE VIOLATIONS

The parties agree that the foregoing facts give rise to violations of the following Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(e) Make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require

disclosure of information otherwise protected by Rule 1.6; or

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. DISPOSITION

In accordance with the Agreed Disposition, it is hereby **ORDERED** that the license of the Respondent, Richard Neal Butt, to practice law in the Commonwealth of Virginia be, and the same hereby is, **SUSPENDED** for a period of six (6) months, effective November 15, 2006, the date that the Board accepted this Agreed Disposition.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13.M of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice, by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the order, and make such arrangements as are required herein within 45 days of this effective date of the order. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and the arrangement required herein shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with these requirements.

It is further **ORDERED** that a certified copy of this order shall be served by the Clerk of the Disciplinary System upon the Respondent, Richard Neal Butt, by certified mail, return receipt requested, at 4128 Faber Road, Portsmouth, Virginia 23703, his address of record with the Virginia State Bar, and by hand to Edward L. Davis, Assistant Bar Counsel, at the Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

The court reporter who transcribed these proceedings is Donna Chandler, of Chandler & Halasz, Registered Professional Reporters, Post Office Box 9349, Richmond, Virginia 23227. (804) 730-1222.

Pursuant to Part 6, Sec. IV, Para. 13.B.8(c) of the Rules, the Clerk of the Disciplinary System shall assess costs.

ENTERED THIS 28TH DAY OF NOVEMBER, 2006
THE VIRGINIA STATE BAR DISCIPLINARY BOARD

By Peter A. Dingman, Esquire
Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ISIDORO RODRIGUEZ

VSB DOCKET NOS. 04-052-0794 and 04-052-1044

ORDER OF VIRGINIA STATE BAR DISCIPLINARY BOARD

THIS MATTER came on to be heard on the 26th and 27th days of October, 2006, before a panel of the Disciplinary Board consisting of James L. Banks, Jr., 1st Vice-Chair, presiding, (the "Chair"), William C. Boyce Jr., Glenn M. Hodge, William F. Glover, and Stephen A. Wannall, Lay member. The Virginia State Bar ("VSB" or "Bar") was represented by Noel D. Sengel, Senior Assistant Bar Counsel. The Respondent, Isidoro Rodriguez, appeared in person and represented himself. The Chair polled the members of the Board Panel as to whether any of them was aware of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative. Donna T. Chandler, RPR, RMR, CCR of Chandler & Halasz, court reporter, P.O. Box 9349, Richmond, Virginia, 23227, (804-730-1222) after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on the Subcommittee Determination (Corrected Certification) by the Fifth District Committee Section II.

At the beginning of the proceedings the Respondent renewed his motion for the members of the panel to disqualify themselves as being interested parties for the reasons stated in his written motion previously filed. Upon consideration of this motion it was denied by the Panel for the reasons previously stated in the Board's Order of August 8, 2006 that originally addressed Respondent's Motion to Recuse and Disqualify Members of the Disciplinary Board Within the Jurisdiction of N. Virginia and the U.S. Dist. Ct. for the E.D. of Va. so to Assure Impartiality.

FINDINGS OF FACT

VSB Exhibits 1–92 were admitted during the course of the hearing without objection. The Respondent's Exhibits 1–42 were admitted during the course of the hearing without objection or over Bar counsel's objection. The VSB presented evidence through its witnesses, the Respondent cross-examined the witnesses and thereafter testified on his own behalf. After consideration of the exhibits and the testimony the Board makes the following findings of fact on the basis of clear and convincing evidence:

VSB No. 04-052-0794

1. At all times relevant hereto, Isidoro Rodriguez, hereinafter the "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been 7924 Peyton Forest Trail, Annandale, VA 22003-1560. VSB Ex. 1. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13 (E) and (I)(a) of the Rules of Virginia Supreme Court. VSB Ex. 2.

2. The Complainant, Jack Harbeston, hereinafter referred to as "Harbeston", was the managing director of Sea Search Armada ("SSA"), a Cayman Island entity that invests in and conducts searches for sunken treasure ships and engages in the salvage and the recovery of their contents. Sometime prior to 1988, SSA had discovered what it thought to be the remains of sunken Spanish ships off the coast of Colombia. SSA had been unable to have its rights to any sunken treasure recognized by the government of Columbia and was looking for legal representation in Colombia to assert its claims. Harbeston sought assistance from the Economic Officer at the United States Embassy in Bogota, Colombia for names of attorneys who could represent SSA. The Economic Officer provided Harbeston with a list of attorneys in Colombia which included the Respondent as a member of the partnership of Devis and Rodriguez. Harbeston subsequently contacted the Respondent regarding possible legal representation. In his conversation with the Respondent, Harbeston learned that Devis, a Colombian attorney, would handle any litigation on behalf of SSA in the Colombian courts. Harbeston was looking for an American attorney, if possible, because of his concerns as to the potentially divided loyalty of a Colombian attorney. In correspondence between the Respondent and Harbeston, Respondent noted that he was the only attorney licensed in the United States working in Colombia and as such his firm was subject to the same standards as law firms in the United States; that unlike any other firm in Colombia his firm "must comply with the State of Virginia Bar Association's Ethics of Professional Responsibility." VSB Ex. 4.

3. SSA subsequently hired the firm of Devis and Rodriguez. By agreement dated October 20, 1988, the parties entered into a representation agreement prepared by Rodriguez which set forth the terms of the engagement including a fee arrangement on an hourly basis that had been discussed prior to the execution of the agreement. VSB Ex. 7. By affidavit dated October 21, 1988, Harbeston, as managing Director of SSA, authorized the law firm of Devis and Rodriguez to act as SSA's legal representative to pursue its claims in Colombia.

4. In order for SSA to proceed with its claims in Colombia, SSA was required to appoint an agent with broad powers to represent SSA. By agreement dated December 16, 1988, executed in the District of Columbia, SSA appointed the Respondent as its legal representative in Colombia. Respondent's Ex. 8. However, Harbeston and SSA were concerned with the scope of the general power of attorney appointing Rodriguez as its agent in Colombia (Respondent's Ex. 8) and sought to limit his authority by advising the Respondent that he could only act upon the written authorization of Harbeston. By letter dated December 14, 1988, the Respondent acknowledged this limitation on his authority, noting that any violation of the restriction "will result in an action before the Virginia Bar Ethics Committee." VSB Ex. 9. By memorandum dated December 13, 1988, Harbeston advised all law firms employed by SSA, including Devis and Rodriguez, that John Ehrlichman would coordinate and manage all litigation by SSA. VSB Ex. 8.

5. By letter dated January 10, 1989 SSA authorized Respondent as its legal representative in Colombia to file a lawsuit against the Republic of Colombia to confirm its rights to the sunken ships. VSB Ex. 12. Thereafter, Devis proceeded to pursue SSA's claims in the courts of Colombia with apparent skill and professionalism to the satisfaction of SSA. Harbeston soon became dissatisfied with the Respondent's performance because of actions he took without written authorization but nevertheless continued the representation arrangement because of his satisfaction with Devis's performance as a litigator. By memorandum to Respondent dated June 9, 1989, (VSB Ex. 13) Harbeston reaffirmed that Respondent was to take no action on behalf of SSA without Harbeston's written authorization as Respondent had acknowledged by his December 14, 1988 letter. Sometime thereafter, but prior to January 1990, the law firm of Rodriguez and Devis had dissolved but Devis continued to represent SSA in its ongoing litigation against the Republic of Colombia. By agreement dated January 3, 1991, Respondent, acting as attorney for SSA, entered into a professional services agreement with Devis to continue with the litigation on behalf of SSA against the Republic of Colombia. This agreement changed the fee arrangement to a contingency fee arrangement whereby Devis would receive 20% of any recovery. VSB Ex. 14. Devis and the Respondent then entered into an agreement to share any contingent fee recovery.

6. By request dated January 3, 1990, the Respondent sought a legal ethics opinion from the VSB that as a Virginia attorney who had entered into a contract in Idaho to be performed in a foreign county, whether he could terminate his representation because the client had failed to pay his fee and could sue the client to collect such a fee. The VSB Ethics Committee gave its opinion on the issue (LEO 1325) that under the facts presented, the Respondent could terminate his representation and sue the client for fees, with the opinion concluding with the customary notice that it was an advisory opinion and not binding on any court. VSB Ex. 18.

7. Devis continued the litigation successfully as the case made its way through the Colombian judicial system as the Colombian government appealed each adverse decision. Respondent does not appear to have played any role in the litigation. By letter dated March 24, 2000 Devis advised Respondent not to use his name in Respondent's professional activities, and that Harbeston was upset with Respondent's activities and wanted to revoke the power of attorney. VSB Ex. 15. Devis acknowledged he would honor their contingent fee sharing arrangement. By letter dated April 6, 2000, Harbeston revoked the general power of attorney from SSA to Respondent (which he had forgotten to do earlier), stating that neither SSA nor its related entities owed Respondent any legal fees and that any understanding relating to fees was in the agreement between Devis and Respondent to share any contingency fee. VSB Ex. 16.

8. In September of 2000 the Respondent filed suit against SSA in the United States District Court for the Eastern District of Virginia seeking to enforce a claim for attorney's fees in the amount of $4.5 million against SSA. VSB Ex. 19. The Respondent testified that he based the amount of his attorney's fee claim on the annual salary ($300,000 to $400,000) of a legal representative of a United States company in a foreign land for a period of 12 years. Included as defendants in this litigation were Harbeston, related entities to SSA and Devis. None of the defendants were residents of the Commonwealth of Virginia. The Respondent's basis for jurisdiction by the federal court in Virginia was the fact that he was a Virginia attorney, Virginia Code Section 54.1-3932 grants an attorney a lien for fees and LEO 1325 which said he could sue his client. The defendants in this litigation obtained the services of Harrison Pledger, a Virginia attorney, who filed a motion to dismiss based on the lack of personal jurisdiction over the defendants. This motion was granted and the suit was dismissed. The Respondent then appealed to the Fourth Circuit Court of Appeals and that court affirmed the District Court's ruling. The Respondent then petitioned for a Writ of *Certiorari* in the United States Supreme Court but that petition was denied.

9. After the denial of the Writ of *Certiorari* by the United States Supreme Court the Respondent filed a slightly different law suit in the United States District Court for the Eastern District of Virginia against the defendants in the earlier suit and also added several other defendants who were investors in SSA or related entities. VSB Ex. 20. The District Court dismissed this second law suit, finding that the Respondent had failed to plead additional facts to the first suit to give the court personal jurisdiction over any of the defendants. This ruling was affirmed on appeal to the Fourth Circuit. The Respondent then sought a Writ of *Certiorari* from the United States Supreme Court which was also denied.

10. While the appeal of the second lawsuit was pending, the Respondent filed a third similar lawsuit, this time in the Circuit Court of Fairfax County against SSA. In this third lawsuit the Respondent named the defendants in the second law suit and Harrison Pledger and his law firm as defendants. VSB Ex. 21. This law suit was also dismissed but the court denied the defendants' motions for sanctions.

11. The Respondent created a website which displayed false and misleading information regarding his relationship with SSA and his participation in the litigation in Colombia. VSB Ex 24 & 25. On the site, the Respondent claimed that in 1988, at the request of the United States Department of State, he became SSA's legal representative and managing attorney responsible for managing alternative dispute resolution negotiations and outside counsel in litigation against the government of Colombia, posts he claims he held until 2000. These assertions are not true. On his resume, the Respondent listed a LLM Civil law degree from the University of Bordeaux. While the Respondent attended a class at the University of Bordeaux, he never received a degree from that university. The Respondent also listed an American Trial Lawyers Ultimate Trial Lawyer Certification. There is no such certification. The basis for Respondent's claim is the fact that he attended a one week continuing legal education program sponsored by the Association of Trial Lawyers of American titled "Ultimate Trial Advocacy".

12. Respondent, in 2004, while communicating with the U. S. State Department regarding Freedom of Information Act ("FOIA") requests he had made for information relating to SSA litigation, represented that he was the attorney for SSA notwithstanding the fact that Harbeston had revoked his authority in 2000. VSB Ex. 23. Respondent claimed that since the power of attorney filed with the Colombian government had never been terminated he was not making a misrepresentation in his FOIA request.

VSB Docket No. 04-502-1044

1. The Respondent lived for many years in Colombia and had married Amalin Hazbun Escaf, a citizen of Colombia. One son was born of the marriage. The marriage ultimately ended in a divorce in Colombia with the wife/mother obtaining custody of the son by order of a Colombian court with visitation rights to the Respondent.

2. The Respondent subsequently returned to the United States where he has been living and his son visited him pursuant to the visitation rights granted by the Colombian Court. In 2001 while the son was visiting the Respondent, the Respondent refused to return his son to Colombia and filed an action in the Juvenile and Domestic Relations Court in Fairfax County to gain custody of his son.

3. In 2001, subsequent to the filing of Respondent's suit in the Juvenile and Domestic Relations Court in Fairfax County, Respondent's ex-wife filed an action in the United States District Court for the Eastern District of Virginia, under the Hague Convention on the Civil Aspects of Child Abduction (the "Hague Convention") and the International Child Abduction Remedies Act ("ICARA") in order to secure the return to Colombia of her son. VSB Ex. 34. In this litigation she was represented by Patrick Stiehm, a Virginia attorney who had undertaken this representation *pro bono* at the request of the National Center for Missing and Exploited Children ("NCMEC"). NCMEC is a non profit corporation that acts as a neutral in facilitating the processing of claims under the Hague Convention and ICARA. When Stiehm initially contacted Respondent to inform him of the pending litigation, Respondent told Stiehm that his *pro bono* representation would cost Stiehm "a big chunk of change." In keeping with this threat, Respondent immediately filed a motion for sanctions against Stiehm (VSB Ex. 35) but that motion was denied. VSB Ex. 38. However, Respondent's subsequent litigation described herein, which included Stiehm as a defendant, resulted in Stiehm incurring significant legal expenses to respond to meritless and vexatious litigation. After a bench trial the Court ruled that the Respondent had kept the child in Virginia in violation of his ex-wife's custody rights. VSB Ex. 39. The Court ordered that the child be removed from the Respondent's custody and returned to the child's mother in Colombia. The Respondent's appeals to the Fourth Circuit Court of Appeals and the United States Supreme Court were denied. After all appeals and stays were denied, the son was reunited with his mother and left for Colombia in June of 2002.

4. In January of 2003, the Respondent filed suit in the District Court for the District of Columbia against numerous defendants, including NCMEC, several employees of NCMEC, the United States District Court for the Eastern District of Virginia, the Fourth Circuit Court of Appeals, the Circuit Court of Fairfax County, the Court of Appeals of Virginia, the District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia, various judges, a court clerk, the United States Department of State, Patrick Stiehm and Stephen Cullen (an attorney who had assisted Stiehm in the Virginia litigation) claiming a constitutional conspiracy by the defendants against him in his litigation in Virginia. VSB Ex. 43. Staff members of NCMEC had been witnesses in the Virginia litigation and NCMEC had provided legal representation to witnesses in the litigation in Virginia. In filing this litigation in which Respondent and his son were named as plaintiffs, Respondent, who is not licensed to practice in the District of Columbia and had not obtained an order to appear *pro hac vice*, attempted to act as attorney for his son.

5. In March of 2003, the Respondent filed a Writ of Mandamus in an attempt to compel NCMEC to take actions to force the country of Colombia to grant the Respondent access to his son. VSB Ex. 64. By letter dated September 24, 2003, Warren L. Dennis, Esquire, counsel for NCMEC, informed the Clerk of the United States Supreme Court that NCMEC would not be filing a responsive brief to the Respondent's Writ because, *inter alia,* it had no power to compel the government of the country of Colombia to do anything. VSB Ex. 65. Upon receipt of a copy of the letter, the Respondent called Mr. Dennis's office and left a voice mail message in which he threatened to file an ethics complaint because the letter falsely characterized the Respondent's Virginia litigation. Also, by letter dated September 29, 2003, the Respondent gave notice of his intent to file a judicial complaint and District of Columbia Bar complaint against those involved in the litigation unless facts already proved were proved within twenty-four (24) hours. VSB Ex. 67.

6. In the District of Columbia litigation the Respondent repeatedly filed pleadings with no basis in law or fact. VSB Ex. 43–81. In an amended complaint (VSB Ex. 72) Respondent asserted a claim under the Racketeer Influenced and Corrupt Organization Act (RICO) 18 U.S.C. 1961. Included as defendants in the complaint were the United States Supreme Court, the United States Court of Appeals for the Fourth Circuit, the United States Court of Appeals for the District of Columbia, the United States District Court for the Eastern District of Virginia, the United States District Court for the District of Columbia, the Virginia Supreme Court, the Court of Appeals of Virginia and the Circuit Court of Fairfax County. Respondent's actions in the D.C. litigation clearly demonstrates his use of the legal system to harass and intimidate anyone whom he considered to have been involved in the Virginia litigation that returned his son to Colombia and to re-litigate the Virginia case.

7. Respondent's actions in naming NCMEC and some of its employees as defendants in this litigation cost NCMEC over $160,000 in legal expenses and nearly bankrupted the organization. Throughout the course of this litigation, the Respondent misrepresented his credentials as a lawyer and his license status in the District of Columbia and New York to the courts and opposing parties. The Respondent graduated from law school in 1976. He was first licensed to practice law in the Commonwealth of Virginia in 1982. Virginia is the only jurisdiction in which Respondent has a license to practice law. The Respondent listed a number of governmental and quasi governmental legal jobs in the District of Columbia on his resume between the years 1976 and 1982 requiring a valid law license in the United States, during which period he was not licensed to practice law anywhere in the United States. The Respondent also noted on various documents that he practiced law in the District of Columbia for a period of time after his licensure in Virginia, but has never been licensed in the District of Columbia.

8. During this litigation, the Respondent filed pleadings and attempted to represent his minor son on several occasions in the District of Columbia litigation, despite the fact there was a conflict of interest between the father and son, despite the fact that the Respondent would be a witness in the case and despite the fact that the judge instructed the Respondent to cease representing his son. VSB Ex. 48 and 50. The Respondent's law partner also attempted to represent the son but the court refused to permit that representation.

MISCONDUCT

The Certification for **VSB Docket No. 04-052-0794** charges violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

RULE 1.16 Declining Or Terminating Representation

Except as stated in paragraph (c), a lawyer shall not represent a client or where representation has commenced, shall withdraw from the representation of a client if:

(3) the lawyer is discharged.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(i) file a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 7.1 Communications And Advertising Concerning A Lawyer's Services

(a) A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication or advertisement violates this Rule if it:

(1) contains misleading fee information;

(2) states or implies that the outcome of a particular legal matter was not or will not be related to its facts or merits;

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(4) contains an endorsement by a celebrity or public figure who is not a client of the firm without disclosure (i) of the fact that the speaker is not a client of the lawyer or the firm, and (ii) whether the speaker is being paid for the appearance or endorsement; or

(5) contains a portrayal of a client by a non-client without a disclosure that the depiction is a dramatization.

In the determination of whether a communication or advertisement violates this Rule, the communication or advertisement shall be considered in its entirety including any qualifying statements or disclaimers contained therein.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

The Certification for **VSB Docket No. 04-052-1044** charges violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.7 Conflict of Interest: General Rule

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

RULE 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, subject to Rule 1.6;

(3) fail to disclose to the tribunal controlling legal authority in the subject jurisdiction known to the lawyer to be adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

(h) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

(i) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trail, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

Effective January 1, 2004

(i) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

(j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trail, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 3.7 Lawyer As Witness

(a) A lawyer shall not act as an advocate in an adversarial proceeding in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

RULE 4.4 Respect For Rights Of Third Persons

In representing a client, a lawyer shall not use means that have no purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

RULE 7.1. Communications Concerning A Lawyer's Services

(a) A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication violates this Rule if it:

(1) contains false or misleading fee information; or

(2) states or implies that the outcome of a particular legal matter was not or will not be related to its facts or merits; or

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(4) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law.

RULE 7.4 Communication Of Fields Of Practice And Certification

Lawyers may state, announce or hold themselves out as limiting their practice in a particular area or field of law so long as the communication of such limitation of practice is in accordance with the standards of this Rule, Rule 7.1, and Rule 7.3, as appropriate. A lawyer shall not state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as follows:

(a) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;

(b) A lawyer engaged in Admiralty practice may use as a designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation;

(c) A lawyer who has been certified by the Supreme Court of Virginia as a specialist in some capacity may use the designation of being so certified, e.g., "certified mediator" or a substantially similar designation;

(d) A lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization, provided that the communication clearly states that there is no procedure in the Commonwealth of Virginia for approving certifying organizations.

Effective Nov. 1, 2002

(a) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;

(b) A lawyer engaged in Admiralty practice may use as a designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation;

(c) A lawyer who has been certified by the Supreme Court of Virginia as a specialist in some capacity may use the designation of being so certified, e.g., "certified mediator" or a substantially similar designation;

(d) A lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization, provided that the communication clearly states that there is no procedure in the Commonwealth of Virginia for approving certifying organizations.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

Effective Mar. 25, 2003

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. DISPOSITION

Upon review of the forgoing finding of facts, the exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1–92, the exhibits presented by the Respondent as the Respondent's Exhibits 1–42, the evidence from witnesses presented on behalf of the VSB and evidence presented by the Respondent in the form of his own testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After deliberation the Board reconvened and stated that it had found by clear and convincing evidence that the Respondent had violated the following Rules of Professional Conduct: in Docket No. 04-052-0794, Rule 1.2(a); 1.5(a); 1.16(a)(3); 3.4(i); 7.1(a); 8.4(b) & (c); in Docket No. 04-052-1044, Rule 1.7(b) 1-2; 3.1; 3.4 (d)(h)(i)(j); 3.7(a)(1-3); 4.4 and 8(b) and (c).

The Board stated that the Bar had failed to prove by clear and convincing evidence any violation of the following the Rules of Professional Conduct: 3.3(a)1-4; 5.5(a)1-2; 7.1(a)1-4; 7.4(a)(b)(c)(d); and effective Nov. 1, 2002 7.4(a)(b)(c)(d).

The basis for the Boards finding of violation of the Rules of Professional Conduct are as follows:

VSB Docket No. 04-052-0794

The Respondent violated Rule 1.2(a) (Scope of Representation) in that his authorization to act on behalf of his client SSA was limited, but he nonetheless acted without written authorization from his client. Furthermore, after he had been discharged by SSA, he wrote the Department of State claiming to be the managing attorney of SSA, which was not the case. He also made a FOIA request without any authorization.

The Respondent violated Rule 1.5(a) 1-8 (Fees) with his claim of a fee of 4.5 million dollars. Respondent acknowledged that the fee arrangement was a contingent fee arrangement and no recovery had been made. Therefore, there was no basis to claim a fee. Furthermore, the amount of the fee, $4.5 million, does not appear to have any reasonable relationship to work actually performed which is necessary for a recovery on a *quantum merit* basis. Respondent testified that he determined the amount based upon what the salary would be for a legal representative for a U. S. company operating in a foreign country.

The Respondent violated Rule 1.16 (a)(3) (Declining or Terminating Representation) by representing that he was SSA's managing attorney in a FOIA request (VSB Ex. 23), which he made well after SSA had terminated their relationship.

The Respondent violated Rule 3.4(i) (Fairness to Opposing Party and Counsel) by filing the litigation in the United States District Court for the Eastern District of Virginia and the Circuit Court of Fairfax County, Virginia. It should appear to any reasonably competent lawyer that the courts did not have jurisdiction over the parties named as defendants. Even giving the Respondent the benefit of the doubt as to the first suit, he received a ruling that the court lacked personal jurisdiction over the defendants which was upheld on appeal. He nonetheless filed a second suit with the same infirmity seeking the same recovery. Furthermore, his suit in the Circuit Court of Fairfax County, Virginia, included as a defendant Harrison Pledger and his law firm, merely because Mr. Pledger had acted as defense counsel in the two suits in the federal court.

The Respondent violated Rule 7.1(a) 1-5 (Communication Concerning a Lawyer's Services) by misrepresentation on his website and resume. VSB Exhibits 24 and 25 show that Mr. Rodriguez, on the website he created, misrepresented his relationship with SSA. He misrepresented what he did for SSA and how he became employed by SSA. He misrepresented his education by listing an LLM civil law degree from the University of Bordeaux. He improperly claimed a certification (the American Trial Lawyer Ultimate Trial Lawyer Certification) where no such certification exists. The Respondent violated Rule 8.4(b) and 8.4(c) (Misconduct) by representing in his FOIA request that he was the managing attorney for SSA, when the evidence shows that he clearly was not.

VSB Docket No. 04-052-1044

(a) The Respondent violated Rule 1.7(b) 1-2 (Conflict of Interest) in his attempt to represent his son in the District Court for the District of Columbia and his continued actions to do so even in the face of a court ruling that there was a conflict.

(b) The Respondent violated Rule 3.1 (Meritorious Claims and Contentions) by his litigation in the District Court for the District of Columbia and his actions in the Circuit Court of Fairfax County, Virginia. The complaint filed by the Respondent with all the parties he named as defendants standing alone shows that the Respondent has violated this Rule. The numerous pleadings filed thereafter further demonstrate that the Respondent's aim was to punish anyone who had any connection with the litigation filed by his former wife to regain custody of their son. Any attorney who had in any way appeared in that litigation ended up being named as a defendant. NCMEC and several of its staff were named as defendants resulting in a legal cost to NCMEC alone of $160,000.00 Attorney Patrick Stiehm who had taken Respondent's ex-wife's case *pro bono* was named as a defendant thereby making good on Respondent's claim that Stiehm's representation would cost him a "big chunk of change."

Furthermore, in litigation in Fairfax County, Respondent subpoenaed two members of NCMEC as witnesses for a hearing involving his efforts to file a Statement of the Case for an appeal, when these two staff members had nothing to do with the Fairfax litigation. While the subpoenas were quashed they nevertheless had the effect of harassing the NCMEC staff members. Remarkably this is the only instance in which the Respondent was sanctioned by a court. Perhaps if he had been sanctioned earlier, either by the United States District Court for the Eastern District of Virginia or the District Court for the District of Columbia, such action would have put a stop to Respondent's unwarranted and vexatious conduct. Unfortunately neither of the courts saw fit to impose sanctions.

(c) The Respondent violated Rule 3.4(d)(h)(i)(j) (Fairness to Opposing Party and Counsel) by the following conduct: (1) by continuing to attempt to represent his son in the District of Columbia litigation in the face of a court ruling, in violation of Rule 3.4(d); (2) by threatening the NCMEC attorney with a bar complaint and filing a criminal complaint with the FBI, in violation of 3.4(h); (3) by filing a motion for sanctions against Patrick Stiehm and naming Stiehm as a defendant in the District of Columbia litigation and by his entire course of conduct in the District of Columbia litigation, in violation of Rule 3.4(i)(j);

(d) The Respondent violated Rule 3.7(a) 1-3 (Lawyer as Witness) by acting as an advocate when he was a necessary witness in the Eastern District of Virginia litigation.

(e) The Respondent violated Rule 4.4 (Respect for the Rights of Third Persons) by the whole course of litigation in the District Court for the District of Columbia. In addition, his subpoena of Ms. Brinkerhoff and Mr. Dennis to the Fairfax Circuit Court for a hearing on the Statement of Facts to be submitted for appeal further demonstrates a violation of this Rule.

(f) The Respondent violated Rule 8.4(b) and 8.4(c) (Misconduct) in asserting a RICO claim and by his letter to the FBI.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and the Respondent, including the Respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by the Respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as REVOCATION.

The Board in reaching its decision of revocation recognized that the violation of certain of the Rules such as Rule 1.5(a), 7.1, and 8.4(b) & (c) standing alone may not merit the ultimate sanction of revocation. However, the Respondent's conduct by pursuing litigation in Virginia in Docket No. 04-052-0794 and in the District of Columbia in Docket No. 04-052-1044 is conduct that cannot be tolerated. While a court through sanctions can protect itself from such conduct by a deceitful and unprincipled attorney, the public must look to the VSB for protection. The other violations demonstrate Respondent's complete disregard for the Rules of Professional Conduct.

Furthermore the Respondent was defiant to any criticism of his conduct in pursuing what can only be described as meritless and vexatious litigation. This same defiance was evident to the Board as the Respondent sought to justify his conduct. Therefore the Board concluded that the sanction of revocation was the only remedy by which the public and bar could be adequately protected.

Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is revoked, effective October 27, 2006.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of October 27, 2006, he shall submit

an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent at his address of record with the Virginia State Bar, being 7924 Peyton Forest Trail, Annandale, VA 22003-1560, by certified mail, return receipt requested, and by regular mail to Noel D. Sengel, Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia, 22314-3133.

ENTERED THIS 28TH DAY OF NOVEMBER, 2006

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: James L. Banks, Jr., 1st Vice Chair

DISTRICT COMMITTEES

VIRGINIA:
BEFORE THE NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
WILLIAM CRAIG MEYER, II
VSB Docket Nos. 06-090-1898, 06-090-2150, 06-090-2377

SUBCOMMITTEE DETERMINATION
(Approval of Agreed Disposition for Public Admonition with Terms)

On May 6, 2006, a duly convened Ninth District Subcommittee consisting of John M. Perry, Jr., Esquire (Chair presiding), Mark B. Holland, Esquire, and John E. Crowder, lay member, met and considered these matters.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.d(1) of the Rules of the Supreme Court of Virginia, the Ninth District Subcommittee of the Virginia State Bar hereby approves the Agreed Disposition entered into between Respondent William Craig Meyer, II ("Respondent") and Assistant Bar Counsel Scott Kulp, and hereby serves upon Respondent the following Public Admonition with Terms:

I. *In the Matter of William Craig Meyer, II*
VSB No. 06-090-1898

FINDINGS OF FACT

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent represented Ruth C. Gilbert ("Mrs. Gilbert") on an appeal to the Court of Appeals upon her conviction and sentence for trespassing.

3. The Court of Appeals dismissed the appeal on October 11, 2005 because Respondent failed to file a transcript or statement of facts.

4. Upon interview by the bar's Investigator, Respondent indicated that he has handled appellate cases for approximately 6 years.

5. According to Respondent, he was required to prepare a statement of facts—something he contends he had not prepared before. Respondent contends he failed to mark his calendar, and the record was sent to the Court of Appeals without a statement of facts. Respondent notified Mrs. Gilbert of his error by September 23, 2005 letter.

6. Thereafter, Mrs. Gilbert's daughter advised Respondent that Mrs. Gilbert did not want an appeal; however, Respondent was to intervene with WalMart to try and hold Mrs. Gilbert's position during her period incarceration.

7. Respondent spoke with WalMart and obtained a leave of absence for Mrs. Gilbert so she could keep her job.

[Rule 1.3].

II. *In the Matter of William Craig Meyer, II*
VSB No. 06-090-2150

FINDINGS OF FACT

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent represented Dan Matthew Witcher as court-appointed counsel on a habitual offender charge.

3. Upon Mr. Witcher's conviction in the circuit court, the Court of Appeals dismissed the appeal on November 22, 2005 because Respondent did not file a transcript or statement of facts.

4. According to Respondent, he made the same error that he made in Ruth C. Gilbert's case by failing to note on his calendar when a statement of facts was required.

5. Upon interview by the bar's Investigator, Dan Witcher stated he was unaware that his appeal to the Court of Appeals had been dismissed; however, since he had only six months remaining on his sentence, he was not interested in trying to revive the appeal.

[Rule 1.3].

NATURE OF MISCONDUCT

The foregoing findings of fact in matters I and II give rise to the following violation of the Rules of Professional Conduct:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

III. *In the Matter of William Craig Meyer, II*
VSB No. 06-090-2377

FINDINGS OF FACT

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent was court-appointed to defend William Edward Grimes in a case in which his parental rights were challenged.

3. Respondent appealed the circuit court's decision in favor of the Pittsylvania County Department of Social Services, and the appeal was dismissed on December 13, 2005 because Respondent failed to send the guardian *ad litem* a copy of the Notice of Appeal.

4. Respondent did not reply to the bar's preliminary investigation letter, and despite his efforts, the bar's Investigator was unsuccessful in coordinating an interview with Respondent.

5. Respondent's secretary, Ms. Joan Mills, stated that she reviewed Respondent's file and believed she had sent the guardian *ad litem* a copy of the Notice of Appeal.

6. Upon interview by the bar's Investigator, Mr. Grimes stated in pertinent part that after carefully considering his options of continuing the appeal, he took Respondent's advice and voluntarily agreed to withdraw the appeal.

7. Upon interview by the bar's Investigator, the guardian *ad litem* stated he did not receive a copy of the Notice of Appeal from Respondent. The only document he recalled receiving in connection with an appeal was Respondent's letter to the Court of Appeals requesting the withdrawal of Mr. Grimes's appeal. He also had a copy of a letter from the Court of Appeals advising Respondent that he could not withdraw the appeal by letter but needed to file a Motion with the Court.

[Rule 8.1c].

NATURE OF MISCONDUCT

The foregoing findings of fact in matter III gives rise to the following violation of the Rule of Professional Conduct:

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6

SUBCOMMITTEE DETERMINATION

It is the decision of the Ninth District Subcommittee to accept the Agreed Disposition of the parties. Accordingly, a hearing is not necessary to resolve this matter and Respondent shall receive a Public Admonition with Terms pursuant to Part Six, Section IV, Paragraph 13.G.1.d(1) of the Rules of the Supreme Court of Virginia. This Public Admonition with Terms is public discipline under the Rules of the Supreme Court of Virginia.

WHEREFORE, the Respondent is hereby issued a Public Admonition for the foregoing matters (VSB Docket Nos. 06-090-1898, 06-090-2150, and 06-090-2377) with the following Terms:

Attend the video rebroadcast of all seven (7) hours of the MCLE-approved Continuing Legal Education course entitled *First Solo and Small Firm Institute* and certify completion to Assistant Bar Counsel Scott Kulp by **November 13, 2006**. Specifically, Respondent must attend the Technology and Law Office Management for Solo and Small Firms portion of this program on one of the listed video replay dates. These seven (7) hours of CLE shall not count toward Respondent's annual MCLE requirement and Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other bar organization. In addition, after attending the aforementioned CLE, Respondent must consult by phone with John J. Brandt, Esquire, 1-800-215-7854, approved Independent Risk Manager for the Virginia State Bar, to discuss, among other things, ways to minimize the risk of future bar complaints in light of Respondent's history of procedural defaults in his appellate practice. Mr. Brandt's full description is listed on the Virginia State Bar's Web site, *vsb.org*. Respondent is charged with providing Assistant Bar Counsel Scott Kulp with a written summary of Mr. Brandt's suggestions by **November 13, 2006**.

Upon satisfactory proof that such terms have been met, this matter shall be closed. If, however, it appears that Respondent has not complied with the terms imposed, including written certification of compliance, the Ninth District Committee will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

Should the Ninth District Committee conclude that Respondent has not fully and timely completed the aforementioned terms, the Ninth District Committee shall impose a Certification for Sanction Determination pursuant to the following agreed provisions for purposes of the imposition of an alternative sanction.

Stipulations For Disciplinary Board Proceedings Upon Certification for Sanction Determination Upon Terms Failure

Upon Certification for Sanction Determination of the instant cases to the Disciplinary Board by the Ninth District Committee, this Agreed Disposition shall be presented to the Disciplinary Board for its consideration of the sanction to be imposed pursuant to Paragraphs 13.B.5.c and 13.I.4 of the Rules of the Supreme Court of Virginia.

The sanction to which the bar and Respondent agree as an appropriate sanction to be imposed upon Certification for Sanction Determination is a **30-day suspension** of the Respondent's license to practice law in the Commonwealth of Virginia. Should the Disciplinary Board not approve this Agreed Disposition, the Respondent understands that a hearing will take place before the Disciplinary Board for a sanction determination pursuant to Paragraph 13.I.4 of the Rules of the Supreme Court of Virginia.

Respondent agrees that his prior disciplinary record may be disclosed to the Ninth District Subcommittee, and, if applicable, to the Disciplinary Board considering the appropriate agree disposition as stated herein.

The Clerk of the Disciplinary System shall assess the appropriate administrative costs pursuant to Paragraph 13.B.8.c.(1) of the Rules of the Supreme Court of Virginia.

NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: John M. Perry, Jr., Esquire
Subcommittee Chair Presiding

VIRGINIA:
BEFORE THE SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DONALD ROMAIN RAY

VSB Docket Nos. 05-021-2526
05-021-2527

DISTRICT COMMITTEE DETERMINATION
(PUBLIC DISMISSAL FOR EXCEPTIONAL CIRCUMSTANCES)

On September 14, 2006, a hearing in this matter was held before a duly convened Second District Committee panel consisting of Donald C. Schultz, Esquire, Mary M. Kellam, Esquire, Robert W. McFarland, Esquire, Michael C. Moore, Esquire, David McDonald, Lay Member, Michael S. Brewer, Lay Member, and Paul K. Campsen, Esquire, Chair, presiding.

The Respondent, Donald Romain Ray, Esquire appeared in person *pro se*. The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis, Esquire.

The matter proceeded upon the Notice of Hearing, dated July 10, 2006, on appeal of a Subcommittee Determination. The Notice of Hearing set forth allegations that the Respondent's conduct violated Rules of Professional Conduct 1.1, *Competence*, and 1.3 (a), *Diligence*.

The Chair polled each member of the hearing panel as to whether they had any personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial. Upon receiving answers in the negative, and upon the Chair affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

The parties made opening statements, and the panel then received the testimony of the Respondent, Donald Romain Ray, who testified in his own behalf and as an adverse witness for the bar. The panel also received Virginia State Bar Exhibits 1-4 without objection.

Upon the conclusion of the bar's evidence, the Respondent moved to dismiss the allegations of misconduct, which motion the Committee took under advisement and overruled at the conclusion of the case. The parties presented closing arguments, and the panel adjourned to deliberate whether any of the charges of misconduct had been proven by clear and convincing evidence.

Pursuant to Part 6, Section IV, Paragraph 13.H.2 (m) of the Rules of the Virginia Supreme Court, the Second District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Dismissal for Exceptional Circumstances:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Donald Romain Ray, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On August 31, 2002, Nelson J. Tobin was arrested in the City of Chesapeake for disorderly conduct and refusing to identify himself, both misdemeanors, and taken to the local jail.

3. At the jail, he was arrested again for assaulting a sheriff's deputy, a class six felony, in violation of Virginia Code Section 18.2-57 (c).

4. On November 22, 2003, the Chesapeake Circuit Court found Mr. Tobin guilty of the felony charge, ordered a presentence report, and scheduled sentencing for February 11, 2003.

5. In the misdemeanor case, the Commonwealth obtained a single indictment for disorderly conduct, and trial was scheduled for January 31, 2003 in the Chesapeake Circuit Court.

6. As a favor to a friend, Mr. Ray agreed to assist Mr. Tobin in both cases, and had himself substituted as counsel on January 3, 2003.

7. On January 13, 2003, Mr. Ray filed a motion to set aside the verdict and a new trial in the felony case, which was denied.

8. When he filed the motion, he also filed the trial transcript from the November 22, 2002 trial, and came to rely upon that filing later when he noted the appeal.

9. After a plea of guilty to the misdemeanor charge on January 31, 2003, the court chose to consolidate the sentencing hearing in this case with the felony matter on February 11, 2003.

10. On February 11, 2003, the court sentenced Mr. Tobin to a net sentence of six months to serve on the charge of assaulting a sheriff's deputy, and two months on the disorderly conduct charge.

11. Mr. Ray timely filed notices of appeal in both cases with the Court of Appeals on March 13, 2003.

12. Mr. Ray hand-delivered the same notices to the trial court on March 10, 2003.

13. Unbeknownst to Mr. Ray, the trial court erroneously filed both notices of appeal in the felony file, causing the record in the misdemeanor case to reflect no notice of appeal.

14. On May 23, 2003, having received the trial court record in the misdemeanor case with no notice of appeal, the Court of Appeals dismissed the appeal.

Allegations relating to VSB Docket Number 05-021-2527:

15. The appeal of the misdemeanor conviction (Case Number CR02-3637, Record Number 0662-03-1) having been dismissed, the deadline to request a rehearing was June 6, 2003.

16. Mr. Ray mailed a request for a rehearing on June 5, 2003, but did so by regular mail, resulting in an untimely filing on June 9, 2003. For this reason, the Court of Appeals refused to consider it, and the appeal remained dismissed.

Allegations relating to VSB Docket Number 05-021-2526:

17. With respect to the appeal of the felony conviction (Case Number CR 02-3507, Record Number 0663-03-1), Mr. Ray did not order or file the transcript from the February 11, 2003 sentencing hearing, having filed only the transcript from the underlying trial of November 22, 2002.

18. Further, since he filed the transcript as an attachment to his motion to set aside the verdict and new trial, the trial court did not originally treat it as properly filed for the appeal.

19. On May 23, 2003, the Court of Appeals issued a show-cause order to Mr. Ray concerning his failure to file the transcript, and set a deadline of June 7, 2003 to file a response.

20. By letter dated June 5, 2003, the trial court filed the November 22, 2002 transcript.

21. Mr. Ray mailed his response to the show-cause on June 5, 2003, together with his response in the other case, but as in the other case, did so by regular mail, resulting in a late filing on June 9, 2003. Accordingly, the court did not consider his response to the show-cause order.

22. Mr. Ray's deadline for filing the petition for appeal in the felony case was July 2, 2003, but he did not file it until July 14, 2003. Accordingly, on July 16, 2003, the Court of Appeals dismissed the appeal.

General Information (Continued):

23. By letter, dated July 16, 2003, the Chief Deputy Clerk of the Court of Appeals explained these developments to Mr. Ray.

24. Mr. Ray appealed the matter, unsuccessfully, to Supreme Court of Virginia.

25. Having felt that he had done all he could do, he advised his client about the habeas corpus process.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rules of Professional Conduct:

VSB Docket Number 05-021-2526

- In not mailing his response to the show-cause order by certified mail (in accordance with Rule 5A:3c of the Rules of Court), resulting in its late filing, and

- and in not filing the petition for appeal on time, resulting in the dismissal of the appeal, and

VSB Docket Number 05-021-2527

- In not mailing his response to the dismissal order by certified mail (in accordance with Rule 5A:3c of the Rules of Court), resulting in its late filing,

the Respondent violated the following Rule of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The Committee did not find a violation of Rule 1.3 (a) by clear and convincing evidence, and dismissed that charge accordingly.

III. DISMISSAL FOR EXCEPTIONAL CIRCUMSTANCES

In determining an appropriate sanction, the Committee considered a number of mitigating factors adduced during the hearing, including the following:

- The Respondent accepted the underlying cases on a pro bono basis, and went to considerable expense in funding all of the costs for the benefit of his indigent client.

- The Respondent took these actions not for a selfish motive, but because he felt that the client had been wronged, and wanted to help him.

- In nearly forty-five years of practice, largely public service, the Respondent has no prior disciplinary record.

- Subsequent to the commencement of this action, the Respondent retired from the practice of law, and changed his membership status with the Virginia State Bar accordingly.

Wherefore, the Committee having found that the Respondent engaged in misconduct, but that there exist exceptional circumstances mitigating against further proceedings, it is the decision of the Committee to issue a Dismissal, Exceptional Circumstances, to the Respondent for the misconduct set forth herein.

Pursuant to Paragraph 13.B.8 (c) (1) of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

The court reporter who transcribed these proceedings is Ronetta Worrell, of Ron Graham and Associates, 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 (757) 490-1100.

SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By Paul K. Campsen, Esquire
Committee Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
EIGHTH DISTRICT COMMITTEE

IN THE MATTER OF
ERIC LEE SISLER
VSB Docket Nos. 05-080-1178
05-080-1179
05-080-1181
05-080-1184

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On October 19, 2006, a hearing in these matters was held before a duly convened Eighth District Committee panel consisting of Sharon R. Chickering, Esquire, Anderson W. Douthat, IV, Lay Member, Tracy A. Giles, Esquire, Don S. Reid, Lay Member, Melissa W. Robinson, Esquire, Daniel C. Summerlin, III, Esquire, and Wilson F. Vellines, Esquire, Chair presiding.

The respondent, Eric Lee Sisler, Esquire ("Respondent") appeared in person *pro se*. The Virginia State Bar appeared through its Assistant Bar Counsel, Kathryn R. Montgomery, Esquire. Darlene Owings of Cavalier Reporting, Inc. transcribed the proceedings.

The matter proceeded upon the Notice of Hearing and Charges of Misconduct issued on July 27, 2006, which set forth allegations that Respondent's conduct violated Rules of Professional Conduct 1.3 (a), *Diligence*, 1.4 (a) (b) *Communication*, and 8.1 (d), *Bar Admission and Disciplinary Matters*.

Prior to the commencement of the proceedings, the Bar withdrew the Rule 1.4(a) charge. The panel received Virginia State Bar Exhibits 1-10 without objection, and the parties made opening statements. The panel received the live testimony of retired Virginia State Bar Investigator, Clyde K. Venable, Karen Strickler, and Respondent. The panel also received the *de benne esse* testimony of Betty Plogger Camden and Michael Camden, who were incarcerated on the day of the hearing.

Upon the conclusion of the Bar's evidence, Respondent presented his evidence, which included Respondent's Exhibits 1-5 and his own testimony. Thereafter, the parties presented closing arguments. The Committee then retired for deliberations and dismissed the all Charges of Misconduct in VSB Docket Numbers 05-080-1178, 05-080-1179, and 05-080-1184. The Committee found by clear and convincing evidence a violation of Rule 1.3(a) in VSB Docket Number 05-080-1181. The Committee dismissed a Rule 8.1(d) charge in the same case. The Committee then received evidence for the sanction determination, which consisted of Respondent's prior disciplinary record, and again retired to consider the appropriate sanction.

Pursuant to Part 6, Section IV, Paragraph 13.H.2 (l)(2)(d) of the Rules of the Virginia Supreme Court, the Eighth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

VSB Docket No. 05-080-1181
Complainant: VSB

I. FINDINGS OF FACT

1. At all times relevant to this matter, Respondent Eric Lee Sisler was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent was court-appointed to represent Betty Camden on a charge of setting fire to a dwelling, for which she was convicted. At Ms. Camden's request, Respondent then filed an appeal.

3. On September 16, 2002, Respondent sent Ms. Camden a letter stating that the transcript had been filed, and that he was working on the petition, which was due on October 4, 2002.

4. On October 6, 2002, two days after the petition was due to be filed, Respondent met with Ms. Camden and told her he saw no grounds for an appeal.

5. Thereafter, Respondent filed nothing further with the Court of Appeals on Ms. Camden's behalf.

6. On October 17, 2002, the appeal was dismissed by the Virginia Court of Appeals for failure to file a petition.

7. Respondent advised Bar that although the petition was due October 4, 2002, he did not meet with Ms. Camden until October 6, 2002 to discuss whether to pursue the appeal.

8. Ms. Camden wanted to appeal her conviction and did not authorize Respondent to decide whether to proceed with the appeal.

9. Respondent's failure to perfect Ms. Camden's appeal constituted a conscious disregard for the responsibility owed to his client.

10. Respondent has since taken measures to ensure that this type of misconduct does not reoccur.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that Respondent's conduct was in violation of the following Rule of Professional Conduct:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

The Committee did not find a violation of the Rule 8.1(d) by clear and convincing evidence and dismissed that charge accordingly.

III. PUBLIC REPRIMAND

It is the decision of the Committee to impose a Public Reprimand upon Respondent Eric Lee Sisler, and he is so reprimanded.

Pursuant to Paragraph 13.B.8.c.1 of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

EIGHTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By Wilson F. Vellines, Esquire
Eight District Committee Chair

Virginia Supreme Court Approved Pro Hac Vice *Rule 1A:4*

On November 28, 2006, the Virginia Supreme Court approved, effective February 1, 2007, Rule 1A:4, Rules of the Supreme Court of Virginia.

The new *Pro Hac Vice* rule permits an out-of-state lawyer to appear in a proceeding before a Virginia court, board or administrative agency ("tribunal") provided the out-of-state lawyer:

- is licensed and authorized to practice law in another state, territory or possession of the United States.

- associates an active member in good standing of the Virginia State Bar who shall file with the applicable tribunal where the matter is pending: a motion for the out-of-state lawyer to appear *pro hac vice*; a notarized affidavit completed by the out-of-state lawyer on a form approved by the Supreme Court of Virginia; a $250 application fee; and a proposed order granting or denying the motion.

- has not appeared *pro hac vice* before a Virginia tribunal in twelve (12) cases within the last twelve (12) months preceding the date of the current application.

Rule 1A:4. Out-of-State Lawyers—When Allowed to Participate in a Case *Pro Hac Vice*.

1. Introduction. A lawyer who is not a member of the Virginia State Bar, but is currently licensed and authorized to practice law in another state, territory, or possession of the United States of America (hereinafter called an "out-of-state lawyer") may apply to appear as counsel *pro hac vice* in a particular case before any court, board or administrative agency (hereinafter called "tribunal") in the Commonwealth of Virginia upon compliance with this rule.

2. Association of Local Counsel. No out-of-state lawyer may appear *pro hac vice* before any tribunal in Virginia unless the out-of-state lawyer has first associated in that case with a lawyer who is an active member in good standing of the Virginia State Bar (hereinafter called "local counsel"). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the case. Local counsel shall personally appear and participate in pretrial conferences, hearings, trials, or other proceedings actually conducted before the tribunal. Local counsel associating with an out-of-state lawyer in a particular case shall accept joint responsibility with the out-of-state lawyer to the client, other parties, witnesses, other counsel and to the tribunal in that particular case. Any pleading or other paper required to be served (whether relating to discovery or otherwise) shall be invalid unless it is signed by local counsel. The tribunal in which such case is pending shall have full authority to deal with local counsel exclusively in all matters connected with the pending case. If it becomes necessary to serve notice or process in the case, any notice or process served upon local counsel shall be deemed valid as if served on the out-of-state lawyer.

3. Procedure for applying. Appearance *pro hac vice* in a case is subject to the discretion and approval of the tribunal where such case is pending. An out-of-state lawyer desiring to appear *pro hac vice* under this rule shall comply with the procedures set forth herein for each case in which *pro hac vice* status is requested. For good cause shown, a tribunal may permit an out-of-state lawyer to appear *pro hac vice* on a temporary basis prior to completion by the out-of-state lawyer of the application procedures set forth herein. At the time such temporary admission is granted, the tribunal shall specify a time limit within which the out-of-state lawyer must complete the application procedures, and any temporary *pro hac vice* admission shall be revoked in the event the out-of-state lawyer fails to complete the application procedure within the time limit.

(a) *Notarized Application.* In order to appear *pro hac vice* as counsel in any matter pending before a tribunal in the Commonwealth of Virginia, an out-of-state lawyer shall deliver to local counsel to file with the tribunal an original notarized application and a non-refundable application fee of $250.00 payable to the Clerk of the Supreme Court. *Pro hac vice* counsel must submit a notarized application with the non-refundable application fee of $250.00 for each separate case before a tribunal. The fee shall be paid to the Clerk of the Supreme Court of Virginia. The tribunal shall file a copy of the notarized application, as well as its order granting *pro hac vice* admission in the case and the $250.00 fee, with the Clerk of the Supreme Court of Virginia. Original, notarized applications and orders granting, denying or revoking applications to appear *pro hac vice* shall be retained in a separate file containing all applications. The clerk of the tribunal shall maintain the application for a period of three years after completion of the case and all appeals.

(b) *Motion to associate counsel pro hac vice.* Local counsel shall file a motion to associate the out-of-state lawyer as counsel *pro hac vice* with the tribunal where the case is pending, together with proof of service on all parties in accordance with the Rules of the Supreme Court of Virginia. The motion of local counsel shall be accompanied by: (1) the original, notarized application of the out-of-state lawyer; (2) a proposed order granting or denying the motion; and (3) the required application fee.

(c) *Entry of Order*. The order granting or denying the motion to associate counsel *pro hac vice* shall be entered by the tribunal promptly and a copy of the order shall be forwarded to the Clerk of the Supreme Court. An out-of-state lawyer shall make no appearance in a case until the tribunal where the case is pending enters the order granting the motion to associate counsel *pro hac vice* unless temporary admission has been approved pursuant to this rule. The order granting *pro hac vice* status shall be valid until the case is concluded in the courts of this Commonwealth or a court revokes the *pro hac vice* admission.

4. Notarized Application. The notarized application required by this rule shall be on a form approved by the Supreme Court of

Virginia and available at the office of the clerk of the tribunal where the case is pending.

5. Discretion and Limitation on Number of Matters. The grant or denial of a motion pursuant to this rule by the tribunal is discretionary. The tribunal shall deny the motion if the out-of-state lawyer has been previously admitted *pro hac vice* before any tribunal or tribunals in Virginia in twelve (12) cases within the last twelve (12) months preceding the date of the current application. In the enforcement of this limitation, the tribunal may consider whether the pending case is a related or consolidated matter for which the out-of-state lawyer has previously applied to appear *pro hac vice*. Before ruling on a *pro hac vice* motion, the court shall verify with the Supreme Court of Virginia the number of cases during the preceding twelve (12) months in which the out-of-state lawyer was admitted in Virginia *pro hac vice*.

6. Transfer of Venue and Appeal. The out-of-state lawyer's *pro hac vice* admission shall be deemed to continue in the event the venue in the case or proceeding is transferred to another tribunal or is appealed; provided, however, that the tribunal having jurisdiction over such transferred or appealed case shall have the discretion to revoke the authority of the out-of-state lawyer to appear *pro hac vice*.

7. Duty to Report Status. An out-of-state lawyer admitted *pro hac vice* shall have a continuing obligation during the period of such admission to advise the tribunal promptly of any disposition made of pending disciplinary charges or the institution of any new disciplinary proceedings or investigations. The tribunal shall advise the Clerk of the Supreme Court of Virginia if the tribunal denies or revokes the out-of-state lawyer's permission to appear *pro hac vice*.

8. Record-keeping. The Clerk of the Supreme Court of Virginia will maintain an electronic database necessary for the administration and enforcement of this rule.

9. Disciplinary Jurisdiction of the Virginia State Bar. An out-of-state lawyer admitted *pro hac vice* pursuant to this rule shall be subject to the jurisdiction of all tribunals and agencies of the Commonwealth of Virginia, and the Virginia State Bar, with respect to the laws and rules of Virginia governing the conduct and discipline of out-of-state lawyers to the same extent as an active member of the Virginia State Bar. An applicant or out-of-state lawyer admitted *pro hac vice* may be disciplined in the same manner as a member of the Virginia State Bar.

10. In-State Services Related to Out-of-State Proceedings. Subject to the requirements and limitations of Rule 5.5 of the Virginia Rules of Professional Conduct, an out-of-state lawyer may provide the following services without the entry of a *pro hac vice* order:

(a) In connection with a proceeding pending outside of Virginia, an out-of-state lawyer admitted to appear in that proceeding may render legal services in Virginia pertaining to or in aid of such proceeding.

(b) In connection with a case in which an out-of-state lawyer reasonably believes he is eligible for admission *pro hac vice* under this rule: (1) the out-of-state lawyer may consult in Virginia with a member of the Virginia State Bar concerning a pending or potential proceeding in Virginia; (2) the out-of-state lawyer may, at the request of a person in Virginia contemplating or involved in a proceeding in Virginia, consult with that person about that person's retention of the out-of-state lawyer in connection with that proceeding; and (3) on behalf of a client residing in Virginia or elsewhere, the out-of-state lawyer may render legal services in Virginia in preparation for a potential case to be filed in Virginia.

(c) An out-of-state lawyer may render legal services to prepare for and participate in an ADR process, regardless of where the ADR process or proceeding is expected to take place or actually takes place.

JUSTICE KINSER dissents.

continued, next page

A full copy of the approved rule may be obtained by contacting the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 AM and 4:30 PM, Monday through Friday. Copies of the approved rule can also be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at 804-775-0557, or can be found at the Virginia State Bar's Web site at http://www.vsb.org.

Add Appendix of Forms, Form 1 to Part One A as follows:

APPENDIX OF FORMS.

1. Application to Appear *Pro Hac Vice* Before a Virginia Tribunal

I, _____, the
NAME OF APPLICANT

undersigned attorney, hereby apply to this tribunal of the Commonwealth of Virginia,

_____, to appear as counsel
NAME OF TRIBUNAL

pro hac vice pursuant to Rule 1A:4 of the Rules of the Supreme Court of Virginia.

I further state the following:

1. The case in which I seek to appear *pro hac vice* is styled
   _____, has
   docket number _____ and is pending in _____.

This case ☐ is ☐ is not a related or consolidated matter for which I have previously applied to appear *pro hac vice*.

2. _____,
APPLICANT'S RESIDENCE ADDRESS

_____
APPLICANT'S OFFICE ADDRESS

3. _____
NAME OF LOCAL COUNSEL VSB NUMBER

_____
STREET ADDRESS

_____

_____
FAX NUMBER EMAIL ADDRESS TELEPHONE NUMBER

4. _____
NAME OF PARTY TO CASE

_____
NAME AND ADDRESS OF COUNSEL FOR PARTY

_____
NAME OF PARTY TO CASE

_____
NAME AND ADDRESS OF COUNSEL FOR PARTY

_____
NAME OF PARTY TO CASE

_____
NAME AND ADDRESS OF COUNSEL FOR PARTY

☐ Additional sheet attached.

5. _____

COURT TO WHICH APPLICANT IS ADMITTED — DATE OF ADMISSION

_____

COURT TO WHICH APPLICANT IS ADMITTED — DATE OF ADMISSION

☐ Additional sheet attached.

6. I am a member in good standing and authorized to appear in the courts identified in paragraph 5.

7. I am not currently disbarred or suspended in any state, territory, United States possession or tribunal.

8. I ☐ am not ☐ am subject to a pending disciplinary investigation or proceeding by any court, agency or organization authorized to discipline me as a lawyer. (If such an investigation or proceeding is pending, attach to this application and incorporate by reference a statement specifying the jurisdiction, the nature of the matter under investigation or being prosecuted, and the name and address of the disciplinary authority investigating or prosecuting the matter.)

9. Within the past three (3) years, I ☐ have not ☐ have been disciplined by any court, agency or organization authorized to discipline me as a lawyer. (If so, attach to this application and incorporate by reference a statement specifying the name of the court, agency or organization imposing discipline, the date(s) of such discipline, the nature of the complaint or charge on which discipline was imposed, and the sanction.)

10. Within the last twelve (12) months preceding this application, I ☐ have not ☐ have sought admission *pro hac vice* under this rule. (If so, attach to thisapplication and incorporate by reference a copy of the order of the tribunal granting or denying your previous application. Such order(s) must include the name of the tribunal, the style of case and the docket number for the case(s) in which you filed an application and whether the application was granted or denied.)

☐ Order(s) attached and incorporated by reference.

11. I hereby consent to the jurisdiction of the courts and agencies of the Commonwealth of Virginia and of the Virginia State Bar and I further consent to service of process at any address(es) required by this Rule.

12. I agree to review and comply with appropriate rules of procedure as required in the case for which I am applying to appear *pro hac vice*.

13. I understand and I agree to comply with the rules and standards of professional conduct required of members of the Virginia State Bar.

_____ _____

DATE — SIGNATURE OF APPLICANT

Commonwealth/State of

☐ City ☐ County of

Subscribed and sworn to/affirmed before me on this date by the above-named person.

_____ _____

DATE — NOTARY PUBLIC

My commission expires: _____

A Copy,

Teste:

Clerk

LEGAL ETHICS OPINION 1830
MAY CRIMINAL DEFENSE ATTORNEY MAKE DE MINIMUS GIFT TO CLIENT OF MONEY FOR JAIL COMMISSARY PURCHASES?

You have presented a hypothetical involving a public defender's office, which provides criminal defense representation exclusively to indigent clients. Many of these clients also have no relatives to provide them with funds needed to buy items from the jail commissary while the client is incarcerated. Clients frequently request attorneys and/or support staff to give the clients nominal amounts of money for that purpose. The money is used primarily to buy personal items or food beyond that regularly provided to inmates. At times, staff is simultaneously trying to persuade some of these clients to accept plea agreements to which the clients are initially resistant. Your request asks whether it is improper for the attorneys and/or their support staff to provide this money to the clients.

Rule 1.8(e) establishes a prohibition against a lawyer providing certain financial assistance to his clients. Specifically, that provision directs as follows:

> A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
>
> (1) a lawyer may advance court costs and expenses of litigation, provided the client remains ultimately liable for such costs and expenses; and
>
> (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

In applying this rule to a particular situation, three questions need to be answered: is the attorney providing financial assistance to a client; is that assistance "in connection with" litigation; and (if so) does the assistance come within either of the two exceptions. Clearly, in the present scenario, an attorney is providing financial assistance to the client in each instance where he provides money for the client's commissary account. The critical question then is whether that assistance is "in connection with" the client's litigation, which would bring the assistance within the prohibition.

Former DR 5-103(B), while similar, did not contain this key phrasing of "assistance in connection with pending or contemplated litigation."[1] Therefore, this Committee's prior opinions do not provide an interpretation of this phrase. In the present instance, the attorney represents the client in the defense of a criminal case; thus, the representation does involve litigation. Does that mean any financial assistance provided to a client is "in connection with" that litigation? The Committee thinks not. The rule does not on its face prohibit providing *all* types of financial assistance to clients who are involved in litigation; rather, the prohibition is narrower, precluding only the assistance that is rendered *in connection with the client's litigation*. In making the distinction between those expenses that come within this prohibition and those that do not, it is useful to consider the purpose of the prohibition. The Virginia Supreme Court, in considering the earlier, but similar, DR 5-103(B)[2], described that purpose as follows:

> [T]he rule in question is intended and designed to maintain the independent judgment of counsel in the representation of clients. If a client owes his attorney money, the attorney may have his own pocket book in mind as he handles litigation. That attorney might settle for an amount sufficient to cover the loan to his client, while foregoing the risk of a trial where his client could recover a larger amount *or lose everything.* The policy embodied in DR 5-103(B) is that a lawyer simply should not face this risk to independent judgment.

Shea v. Virginia State Bar, 236 Va. 442, 327 S.E.2d 63 (1988). Thus, the spirit of the prohibition is that financial assistance is problematic when it over-involves the attorney in the client's case to such a degree that the attorney's professional judgment is compromised.

In the *Shea* opinion, the Virginia Supreme Court interpreted DR 5-103(B) and rejected all forms of financial assistance to litigation clients. *See Shea v. Virginia State Bar*, 236 Va. 442, 327 S.E.2d 63 (1988). This Committee respectfully notes that the current language of Rule1.8(e) was not before the Court in that case. Thus, the Committee is looking at the phrasing of the Rule 1.8(e) prohibition for the first time. While the provision of this commissary money appears to have nothing to do directly with the litigation that is the subject of the representation, the attorney must be mindful of the considerations of maintaining independence in judgment. For example, a very nominal amount placed in a commissary account for gum or toothpaste is a de minimus gift that may be permissible. The lawyer must be mindful, however, of the duty to maintain independent judgment. If ever the de minimus gift occasions the lawyer to reexamine either his/her relationship with the client or his/her own personal interests of settling or handling the case, then the gift is improper. However, if the nominal funds are given on an occasional basis to assist an indigent client for small and assorted commissary purchases that have nothing to do with the litigation, Rule 1.8 does not create a *per se* prohibition against those gifts to clients, nor does any other provision of the Rules of Professional Conduct.

The Committee recognizes that this interpretation seems to be a departure from prior opinions and places the Virginia position in line with only a minority of jurisdictions. In prior LEOs, interpreting former DR 5-103(B), the Committee prohibited various forms of assistance, but a majority of those opinions do not interpret the prohibition itself but rather one of the exceptions to that prohibition. *See e.g* LEOs ##1256, 1237, 1182, 1133, 1060, 997, 941, 892, 820,

FOOTNOTES

1 DR 5-103(B)'s phrasing established a broader prohibition, precluding assistance whenever "representing a client in connection with contemplated or pending litigation." Thus, on the face of these rules, the prohibited litigation connection referred to in the original language was with regard to the client's matter, while in the present Rule 1.8, the prohibited litigation connection refers to the expenses themselves.

FOOTNOTES

2 As noted in Footnote 1, the old rule and the new rule are not identical. Nevertheless, the Committee sees nothing in the rephrasing that changes the basic purpose of this prohibition, only its scope. Thus, the Committee looks to the Shea discussion on this point as relevant.

582, 485, 317, 297. However, in LEO 1269, this Committee prohibited an advancement to a client for living expenses as the loan was a business transaction which could affect the personal judgment of the lawyer. Also, in LEO 1441, the Committee opined that a lawyer may not loan money to a litigation client, with no distinction made regarding how the client would spend the money (i.e., on personal versus litigation expenses).

The Committee recognizes that this interpretation is a minority position. The current Rule 1.8(e) mirrors that provision in the ABA's Model Rules of Professional Conduct. The Committee notes that neither the Comments to Virginia's rules nor those of the Model Rules squarely address this issue of which, if any, expenses would not fall within this prohibition. A majority of jurisdictions with rules containing the language at issue interpret the "in connection with" prohibition as including any and all expenses of a litigation client.[3] However, the Committee does not agree with this majority position as applied to occasional de minimus humanitarian gifts as long as the independent professional judgment of the attorney is and can be maintained.

The Committee finds persuasive the approach of those minority jurisdictions, which find that neither the language nor the spirit of this prohibition create a *per se* ban on all financial assistance, regardless of the purpose or size of the assistance.[4] In *Florida Bar v. Taylor*, 648 So. 2d 1190 (Fla. 1994), the lawyer's gift of second-hand clothing to a litigation client was deemed permissible under Rule 1.8(e) as humanitarian in nature, not made in attempt to maintain employment and not made with any expectation of repayment, from the litigation proceeds or otherwise. The Committee concurs with the Florida court's reasoning that there can be gifts to clients, unrelated to the litigation itself and not involving a loan giving the lawyer an improper stake in the matter, that do not violate Rule 1.8(e). A total prohibition on all such giving paints with an unnecessarily broad brush.

Nevertheless, the Committee acknowledges, for example, in the situation you describe, a *substantial* gift could violate ethical requirements by compromising the representation of a client if the lawyer is also at the time trying, with some difficulty, to persuade the client to accept a plea agreement unappealing to the client. It would be too sweeping to suggest that all gifts, of all sizes, in all circumstances would be permissible. Such a scenario is better addressed by the application of other ethics rules, instead of an overly broad interpretation of Rule 1.8(e).

For example, Rule 1.7 governs conflicts of interest. In particular, Rule 1.7(a) prohibits conflicts of interest where an attorney's personal interest poses significant risk of materially limiting the representation. Could the making of a gift to a client create such a conflict? The Committee acknowledges that a client continually asking for monetary gifts from a lawyer could interfere with the independent professional judgment of the lawyer. Nevertheless, the Committee does caution that an attorney in the present scenario, if he is to make these gifts, should do so in such a way that avoids any impression on the part of the client that the gift is a "reward" or inducement for accepting the plea agreement encouraged by the attorney. The attorney's advice on that point should in no way be linked to the offer of the financial gift.

Rule 1.8 governs various prohibited transactions. As discussed above, the Committee does not consider these gifts to come within the prohibition established in Rule 1.8(e). Moreover, as these are gifts and not loans, Rule 1.8(a) regarding business transactions with a client is not triggered. The Committee opines that these gifts do not constitute any of the other forms of prohibited transactions under Rule 1.8. The gifts contemplated in this hypothetical are presumably of appropriately small amounts.

The second part of the question in this request was whether gifts of this small type may be made by nonattorney staff. The Rules of Professional Conduct regulate members of the Virginia State Bar and do not directly regulate nonattorneys.[5] However, to the extent that the Committee has opined that gifts of the sort described pose no ethical problem for the attorneys, the Committee sees no problem in the attorneys allowing their staff to make these occasional, de minimus gifts as well. The attorney must be mindful of the prohibition in Rule 8.4(a) that an attorney cannot do indirectly though another, in this case a staff person, what they cannot do directly.

This opinion is advisory only, and not binding on any court or tribunal.

Committee Opinion
September 7, 2006

FOOTNOTES

3 *See e.g., Attorney Greivance Comm'n v. Pennington*, 733 A.2d 1029 (Md. 1999); *In re Pajerowski*, 721 A.2d 992 (N.J. 1998); *Cleveland Bar Ass'n v. Nusbaum*, 753 N.E.2d 183 (Ohio 2001); *State ex rel. Oklahoma Bar Ass'n v. Smolen*, 17 P.3d 456 (Okla. 2000); *In re Strait*, 540 S.E.2d 460 (S.C. 2000); *In re Mines*, 612 N.W.2d 619 (S.D.2000); Md. Ethics Op. 2001-10(prohibiting most assistance); S.D. Ethics Op. 2000-3.

4 *See e.g., Florida Bar v. Taylor*, 648 So.2d 1190 (Fla. 1994); I*n re G.M.*, 797 So.2d 931 (Miss. 2001); *Attorney AAA v. Missisppi Bar*, 735 So.2d 294(Miss. 1999) (note that Miss. rule contains unique language); Conn. Ethics Op. 99-42 (1999); Pa. Ethics Op. 99-8, Md. Ethics Op. 00-42(opinion limited to outright gift of small sum of money).

FOOTNOTES

5 Rule 5.3 does establish supervisory accountability for support staff's operation in a manner consistent with the Rules of Professional Conduct:

> With respect to a nonlawyer employed or retained by or associated with a lawyer:
>
> (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
>
> (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
>
> (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
>
> (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
>
> (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

LEGAL ETHICS OPINION 1835
TRUST ACCOUNT—CAN A LAWYER REMIT IRREVOCABLY CREDITED FUNDS WHEN ACCOUNT HOLDS FUNDS FOR ONLY ONE CLIENT?

You have presented a hypothetical situation in which a law firm represents a number of creditors in the collection of delinquent consumer/retail accounts. The firm maintains a separate trust account for each major client, into which they deposit only those funds collected on behalf of that client from account debtors. All of these funds held in each individual account belong only to one client, but are collected from a multitude of different debtors.

Under the facts you have presented you have asked the following questions:

1. When an attorney trust account holds funds for only *one* client, is it necessary to remit *only* on irrevocably credited funds in a trust account, or may remittances be made on a more prompt basis without violating the Rules of Professional Conduct?

2. If the answer to the first question is that disbursements on uncollected funds are permissible under those circumstances, is the same conclusion reached if the retail accounts that are being collected by the client have been "securitized", leaving the client with only servicing and perhaps some residual rights under the securitization process?

Rule 1.15 governs the lawyer's duty to safeguard other's property and 1.15 (c) states that " [A] lawyer shall: … (4) promptly pay or deliver to the client … the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive."

This committee has previously made reference in various LEOs to the term "irrevocably credited" when referring to the appropriate designation of funds available to be ethically disbursed to clients.[1] LEO 1255 clearly states this committee's continuing opinion on the correct timing of disbursement of funds.[2] As the requester correctly states, the term "irrevocably credited" has no legal definition, however, the committee continues to opine that, in spite of past terminology, the funds must be deposited into the lawyer's trust account, credited to the account, and be "cleared" funds that are available for withdrawal and disbursement with no chance of revocation or recall by the financial institution. As the requester has advised, the determination of when funds actually meet that standard is determined by federal banking regulations and is a legal issue outside the purview of this committee.[3]

Additionally, the question distinguishes those funds held in a commingled trust account from those funds held in a trust account exclusively for one client. The answer remains the same.

The answer to the second question is not required since the answer to the first question deemed such disbursements to be improper and the second question seems to involve legal concepts outside the purview of this committee.

This opinion is advisory only, based on the facts presented and not binding on any court or tribunal.

Committee Opinion
September 7, 2006

FOOTNOTES

1 LEOs 183, 1021, 1255, 1256, 1797.

FOOTNOTES

2 While the disciplinary rule establishes an affirmative duty to pass funds to a party or the parties entitled to the funds, it implicitly prohibits payment of funds from an escrow account to the party who is *not or not yet* entitled to the funds. (emphasis added) Thus, a strict interpretation would require an attorney not to disburse upon items deposited in his trust account until the depository bank had irrevocably credited them to that account. (See LE Op. 183, LE Op. 753 and LE Op. 813) It is well established that an attorney assumes a strict fiduciary responsibility when he holds money belonging to the client. (See *Pickus v. Virginia State Bar*, 232 Va. 5 [1986]). LEO 1255

3 The requester accurately states that the amount of time a bank is permitted to hold funds before making the funds available for withdrawal is governed by a federal statute called the Expedited Funds Availability Act, 12 U.S.C. § 4001, *et seq.* (the "EFA"). The EFA places "upper limits" on the amount of time banks are permitted to hold different categories of payment instruments before making the funds available for withdrawal.

Lawyer Advertising Opinion No. A-0117: Online Attorney Directory Listing

Question Presented:
May an attorney be listed in an online legal services directory without violating the lawyer advertising rules (Virginia Rules of Professional Conduct, Rules 7.1-7.5).

Short Answer:
Yes, if it is in fact a legal services directory and not a lawyer referral service.

Facts:
A lawyer desires to apply for a listing on an online (Internet) lawyers' directory ("Directory"). An attorney may request a listing in the Directory by completing and submitting a general information form obtained online or from the publisher. Upon submission of the form, the publisher will send the attorney an application. Upon receipt of the application and fee, and following determination by the publisher that the criteria referred to in this letter are met, the publisher will list the attorney in the Directory.

A consumer will access the Directory via the website or 24-hour telephone service. The consumer will have the option to enter either a zip code and/or a practice area to locate an attorney. The attorneys that are identified in the search will appear on the computer screen or be identified over the telephone in random order. The consumer chooses which attorney he or she wishes to contact without any assistance from the publisher. Customer service is available for the limited purpose of assistance with the technical aspects of using the Directory or to provide additional information related to the Directory. The publisher will not provide qualitative information about the attorneys listed in the Directory, answer legal questions, make recommendations or give legal or other advice.

The attorneys listed in the Directory must:

A. Have at least 3 years of legal experience;

B. List only their current areas of practice;

C. Be admitted to the Bar/Supreme Court of the state in which they are practicing, and remain in good standing in all Bar/Courts to which they are admitted throughout the period of time during which they are listed in the Directory (the initial application and annual renewal forms to be completed and submitted by attorneys who wish to be listed or continue to be listed in the Directory will include a question regarding disciplinary actions currently pending against the attorney to ensure compliance with this feature);

D. Carry and on an annual basis provide proof of minimum levels of malpractice insurance ($100,000/claim, $300,000 aggregate);

E. Provide each client who identifies the attorneys through use of the Directory with a written fee agreement before beginning any legal work for the client;

F. Be independent practitioners and not employed by the publisher or any of its affiliates;

G. Only identify the locations from which they will perform the work;

H. Be responsible for the content of his or her listing in the Directory;

I. Exercise independent professional judgment in rendering legal services to any client who selects the attorney through his or her use of the Directory; and

J. Not charge more for legal services provided to clients who are users of the Directory than would be charged to other clients who are not users of the Directory.

In addition to the description of the Directory as discussed above, the Directory shall have the following characteristics:

1. Users of the Directory will not pay any fee to the publisher for such use;

2. The Directory will not be interactive, no information about a user's legal issues will be sought or obtained by the publisher, the publisher will not engage in any solicitation of prospective clients, and users of the Directory will be solely responsible for selecting which attorney to engage;

3. As stated above, users will be able to search for listed attorneys by geographic location and/or area of practice, although all attorneys that are identified in response to a search will be listed in random order and the random order will be different for each new search;

4. If consumers are unable to utilize the Directory online, a toll-free telephone number will be available for customer service assistance (again, attorneys identified in any search will be randomly selected);

5. Attorneys who are listed in the Directory will pay a fixed annual listing fee. The publisher and listed attorneys will not share any legal fees earned by the listed attorney;

6. Neither the publisher nor its affiliates will endorse or recommend any listed attorney, and inclusion in the Directory does not constitute an endorsement or recommendation by the publisher or its affiliates;

7. The publisher will respond to and investigate complaints about attorneys by users of the Directory and will track the outcomes of such investigations;

8. The publisher will utilize its annual credentialing standards to validate licenses and each attorney's standing in the states in which he or she is licensed;

9. Attorneys listed in the Directory will not be prohibited from participating in any other form of advertising, lawyer directory, legal services plan or referral service, and the Directory will be completely independent from any other of the publisher's legal plans offered today;

10. The Directory will include only the attorney's name, address, contact information, the languages the attorney speaks fluently and area(s) of practice (with appropriate disclaimers, as necessary);

11. In accordance with Rule 7.1(a)(3) of the Rules regulating the Virginia Bar ("Rules"), at no time will the publisher compare listed attorneys against one another or against attorneys who are not listed in the Directory;

12. The publisher will not review or verify any part of the information to be included in the attorney listings;

13. Attorneys listed in the Directory will be granted non-exclusive, restricted and conditional licenses to use the publisher's logos to describe the Directory in which they are listed, but may not use such logos for any other reason. In no event will the right extend to using the logos as an endorsement of the attorneys by the publisher or any of its affiliates;

14. The publisher will not evaluate or confirm whether Directory attorneys are in good financial standing, discriminate against potential clients, or provide a certain amount of pro bono services per year;

15. The publisher also will not be responsible for determining whether a Directory attorney is qualified to handle a particular case;

16. The publisher will retain the right to remove any attorneys from the Directory, with or without cause, although attorneys who are suspended or disbarred by a State Bar Association will be immediately removed; and

17. If an attorney does not comply with the publisher's annual credentialing request for malpractice insurance updates, the publisher will remove him or her from the Directory.

The publisher also will recommend, and in some cases require, that all Directory attorneys provide (for at least one year before the amounts may be revised) the following services to members of not-for-profit organizations that provide the Directory as a benefit to their members:

- 30 minute free consultation in person or by telephone;
- Simple will for a single person at a cost of $75;
- Simple wills for a married couple at a cost of $100;
- Financial Power of Attorney at a cost of $35;
- Healthcare Power of Attorney & Living Will at a cost of $35; and
- 20% discount off the attorney's usual and customary hourly rate.

The attorneys will not be permitted or required to:

a. Identify themselves as a specialist in any particular area of practice;

b. List themselves in a location in which they or their law practice do not have an office;

c. Advertise or otherwise claim they are endorsed by the publisher or its affiliates; or

d. Pay to the publisher a per-referral fee.

Analysis:
Based on the facts presented, the Committee believes that the online Directory is, in fact, a lawyer directory and not a lawyer referral service. The publisher does not participate in any way in the selection or recommendation of any particular lawyer. Lawyers who list themselves in an online directory must comply with the professional conduct rules that govern advertising. As required by Rule 7.2(e)[1] each attorney listed in the Directory is responsible for its content or in the alternative, law firms listed in the Directory must file with the Virginia State Bar a statement identifying the attorney responsible for the content of the listing.

Online legal directories, like printed legal directories, are permissible if they do not contain false or misleading communications. Arizona Ethics Op. 99-10 (1999) (lawyers' association may publish its legal directory on Web site so long as directory is not false or misleading); Massachusetts Ethics Op. 98-2 (1998) (lawyers may participate in computerized bar directory maintained by bar association if listings are not false or misleading). According to Ohio Supreme Court Ethics Op. 99-3 (1999), when a lawyer is included in a professional organization's online membership directory, a link from the lawyer's name to the lawyer's e-mail address or Web site is not tantamount to a referral.

Committee Opinion
September 19, 2006

FOOTNOTES

1 Rule 7.2(e) Advertising made pursuant to this Rule shall include the full name and office address of an attorney licensed to practice in Virginia who is responsible for its content or, in the alternative, a law firm may file with the Virginia State Bar a current written statement identifying the responsible attorney for the law firm's advertising and its office address, and the firm shall promptly notify the Virginia State Bar in writing of any change in status.